A. Submitted 2-41 Judge Davis.

Davis

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# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. 539.

MARSHALL O. ROBERTS AND EDWARD N. DICKERSON, SURVIVING TRUSTEES OF ALBERT G. SLOO, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED JUNE 24, 1875.

Reversed
Bradley J.
Wolfe

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1 In Court of Claims of United States. October term, A. D. 1866.

MARSHALL O. ROBERTS ET AL.
*vs.*
THE UNITED STATES.

To the honorable the Court of Claims:

Your petitioners, Marshall O. Roberts, Horace F. Clark, and Edwd. N. Dickerson, trustees of A. G. Sloo, respectfully represent unto your honorable court that they are and have always been citizens of the United States.

That, by the act of Congress approved March 3d, 1847, it was made the duty of the Secretary of the Navy, upon certain terms in said act enumerated, to contract, on the part of the United States, with Albert G. Sloo, of Cincinnati, in the State of Ohio, to transport the United States mails from New York to New Orleans, touching at Charleston, (if practicable,) Savannah, and Havana, Cuba, and back, twice in each month, and from Havana to Chagres, and back, twice in each month; that on the twentieth day of April, A. D. eighteen hundred and forty-seven, the said act of Congress was carried into effect by the execution of a contract, signed, sealed, and delivered, between the said A. G. Sloo, on the one part, and the United States Government, acting by and through J. Y. Mason, Secretary of the Navy, a copy of which is hereto appended, marked "A," and made part hereof, by which contract, and the terms thereof, the said A. G. Sloo did agree and bind himself to establish a line of steamships, to consist of at least five vessels, for the transportation of the mails of the United States from New York to New

2 Orleans, twice a month, and back, touching at Charleston, (if practicable,) Savannah, and Havana, and from Havana to Chagres, twice a month, and back; that said steamships were to be not less than fifteen hundred tons burden, and propelled by engines of not less than one thousand horse-power each; that it was agreed that two of said steamships should be completed and ready for service on or before the first day of October, anno Domini one thousand eight hundred and forty-eight. The size, kind, make, build, and a particular description of said steamships was in said contract specified and set forth; that such specifications were so made to the end that the said vessels might, at the least possible expense, be converted into war-vessels of the first class, but such should be at the option of the Secretary of the Navy; that two others of said steamships were to be completed, and the contract, in all its terms, to be in full and entire operation, on or before the first day of October, anno Domini one thousand eight hundred and forty-nine.

It was further agreed that each and all of said steamships should be commanded by an officer of the Navy of the United States not below the grade of lieutenant, to be selected by the said A. G. Sloo, with the approval of the Secretary of the Navy, and to be accommodated in a becoming manner without charge to the United States. That it was further agreed that the said A. G. Sloo should receive on board each of said steamships and accommodate in a suitable manner four passed midshipmen of the United States Navy, to serve as watch-officers, and also an agent, to be appointed by the Postmaster-General, who should have charge of the mails to be transported therein, and that safe and convenient apartments should be provided on board said ships for said mails and agent by the said A. G. Sloo, contractor.

That, in consideration of the premises, the United States, by the Sec-

retary of the Navy, did agree to pay to the said A. G. Sloo, as compensation for the said transportation of the mails as above specified and set forth, the just and full sum of two hundred and ninety thousand dollars ($290,000) per annum, payable in quarterly payments, upon the full performance of the service aforesaid.

That it was further agreed between the parties aforesaid that, on tender of proper compensation by the Government of the United States, not exceeding a due proportion of pay therein stipulated, the said A. G. Sloo should convey any mail of the United States which he might be required to convey on any steamship which the said Sloo might
3 own, run, or control on the routes therein specified, beyond the number of trips set forth and specified in the said contract.

That it was further agreed that said contract should continue in force for the term of ten years from the time of the actual commencement of said service therein specified.

Your petitioners further represent, that on or about the third day of September, one thousand eight hundred and forty-seven, the said A. G. Sloo assigned, transferred, and set over unto Geo. Law, Marshall O. Roberts, and Bowes R. McIlvaine, of the city of New York, all his right, title, and interest in and to said contract, and in and to the moneys to be had and received by virtue thereof, and to all the privileges, emoluments, and benefits thereunto belonging, subject, however, to the duties, services, and obligations specified to performed by him, the said A. G. Sloo, to the Government of the United States unto, them, the said George Law, Marshall O. Roberts, and Bowes R. McIlvaine, and the survivor or survivors of them, their successors and assigns, forever, upon the trusts, however, and for the uses and purposes, expressed and declared in a certain deed or indenture, bearing date the seventeenth day of August, one thousand eight hundred and forty-seven, made and executed by and between the said Albert G. Sloo, of the first part, and George Law, Marshall O. Roberts, and Prosper M. Wetmore, by his attorney, Robert C. Wetmore, of the city of New York, and Edwin Croswell, of the city of Albany, in the State of New York, parties of the second part, and the said George Law, Marshall O. Roberts, and Bowes R. McIlvaine, of the city of New York, of the third part, copies of which assignment and trust-deed are hereto attached, marked "B" and "C," and made part hereof, which assignment and transfer has been recognized and permitted by the Government of the United States.

Your petitioners further state, that on or about the month of April, eighteen hundred and fifty-four, the said George Law resigned his position as trustee, and Horace F. Clark, of the city of New York, was elected to fill his place, in accordance with the terms of the trust-deed; and that on or about the year eighteen hundred and fifty-five the said Bowes R. McIlvaine also resigned his position as trustee, and Elwood Fisher, of Washington, in the District of Columbia, was dulyelected to fill his place; also, that on the seventeenth of September, eighteen hundred and fifty-nine, the said Fisher resigned, and Edward N. Dickerson,
4 of New York city, was elected in his place.

Your petitioners further represent, that at the various times specified in said contract the said George Law, Marshall O. Roberts, and others, trustees of said Albert G. Sloo, begun and carried on said contract according to its terms and stipulations, and received therefor the amount therein stipulated and specified.

That on or about the eighth of July, eighteen hundred and fifty, the said George Law, Marshall O. Roberts, Prosper M. Wetmere, and Edwin Croswell assigned and transferred to the United States Mail Steamship

Company of New York all their right, title, and interest in and to the aforesaid contract between the said United States and the said A. G. Sloo, to which reference has been heretofore made herein, which aforesaid assignment, bearing date the eighth day of July, eighteen hundred and fifty, is hereto appended and made part hereof, and marked "D."

They further allege that in the summer of the year one thousand eight hundred and fifty-one the Post-Office Department, being requested by divers and sundry persons, merchants and business men of New York City, to provide additional mail facilities between New York and San Francisco, and being also similarly requested by the postmaster at New York City, conferred with the said United States Mail Steamship Company, which company by its ships was transporting the United States mails in accordance with the assignment aforesaid, and proposed that the said company should furnish additional mail facilities between New York and Chagres; that on the twenty-first day of July, one thousand eight hundred and fifty-one, the president of said company proffered the willingness of the company to perform the additional mail service requested, with the understanding that Congress should provide means and money by which the said U. S. Steamship Company should be paid such sums of money as the said additional mail service might be fairly and equitably worth.

They further allege that such additional mail service was procured as follows: The schedule of running time provided that each steamship should leave New York, touching at Charleston, Savannah, and Havana, leaving New York on the eleventh and twenty-sixth of each month, which touching at the aforesaid places consumed two days.

That the said company had certain other steamships engaged
5 in carrying passengers to Chagres; that said steamers left New York on these voyages on the thirteenth and twenty-eighth of each month, and did not touch at any of the above intermediate ports, but proceeded direct to Chagres, returning in the same way, thereby saving the two days of time consumed as above mentioned by the regular mail line in touching at such intermediate stations.

That by reason of the saving of time as aforesaid it became important that the Post-Office Department should send additional mails by said direct steamers.

Your petitioners further allege, that afterwards, viz, on the ninth day of August, one thousand eight hundred and fifty-one, the said United States Mail Steamship Company having renewed their offer as aforesaid to perform the additional mail-service by carrying the U. S. mails on the direct steamers to Chagres, leaving New York on the thirteenth and twenty-eighth days of each month, as well as by the regular line, leaving New York on the eleventh and twenty-sixth of each month, the Postmaster-General requested the said U. S. Mail Steamship Company to do so, and to carry the said U. S. mails on the said direct steamers to Chagres and back; that the said company did comply with the said request of the Postmaster-General, and did carrry the said U. S. mails by said steamers.

That the said U. S. Mail Steamship Company carried said mails from New York to Chagres direct during the period commencing on the thirteenth day of August, one thousand eight hundred and fifty-one, and ending on the twentieth day of September, anno Domini one thousand eight hundred and fifty-nine, and that they carried the said mails from Chagres to New York by the direct steamers during the period commencing in August, one thousand eight hundred and fifty-one, and ending on the sixteenth of October, anno Domini one thousand eight hun-

dred and fifty-nine; that during this period of time the mails were also carried by said company by the regular line of steamers, touching at the intermediate points above mentioned, to New Orleans, as provided by said contract as aforesaid, for all of which last-mentioned service under said contract they have been fully paid, and the same has, as between the United States and the U. S. Mail Steamship Company, been entirely and completely settled.

6 Your petitioners further allege, that during the spring of the year one thousand eight hundred and fifty-two they established a line of steamships direct from New Orleans to Chagres and back twice each month; that at the request of the Post-Office Department they carried the mails on said steamers for the space of two years and two months, to wit, from the sixteenth July, one thousand eight hundred and fifty-two, to the twentieth September, one thousand eight hundred and fifty-four.

Your petitioners further allege, that by reason of being requested as aforesaid to carry such mails as aforesaid, and by reason of carrying them as aforesaid on the direct steamers, which it was not provided nor stipulated in said contract they should do, there became and was made an implied contract between the United States and them, by which the United States became indebted unto them, and promised to pay them for such service as aforesaid whatever the same might be reasonably worth; that they carried said mails from New York direct to Chagres and back for the space of eight years and months, to wit, from the thirteenth August, one thousand eight hundred and fifty-one, to the sixteenth October, one thousand eight hundred and fifty-nine, and from New Orleans to Chagres and back for the space of two years and two months, to wit, from the sixteenth of July, one thousand eight hundred and fifty-two, to the twentieth of September, eighteen hundred and fifty-four, making two trips in each month, each way, on both lines.

That the compensation allowed by the contract on the regular line was two hundred and ninety thousand dollars ($290,000) per annum; that the additional service so rendered in carrying the mails from New York to Chagres and back was reasonably worth one-half the full contract pay, as above, per annum; that is, for the space of eight years and months, the sum of eight hundred and seventeen thousand seven hundred and fifty-six dollars and eighty cents, ($817,756.80.)

That the additional service so rendered in carrying the mails by the direct line from New Orleans to Chagres and back was reasonably worth one-half the full contract pay per annum, but that the discontinuance of the line from Havana to Chagres and back should be deducted from this amount; that the full contract pay last stated would be the sum of one hundred and forty-five thousand three hundred and five dollars and sixty cents ($145,305.60) per annum; that the discontinued service from Havana to Chagres would be worth the sum of one hundred and

7 eighteen thousand three hundred and eighty-nine dollars and twenty cents, ($118,389.20,) the difference being twenty-six thousand nine hundred and sixteen dollars and forty cents, ($26,916.40;) that one-half this difference per annum would be a reasonable compensation for the aforesaid direct service between New Orleans and Chagres and back; that is, for twenty-six months, the sum of twenty-nine thousand one hundred and fifty-nine dollars and forty-three cents, ($29,159.43.)

The two amounts added would be as follows:

| | |
|---|---|
| Direct service from New York to Charges and back, for eight years | $817,756 80 |
| Direct service from New Orleans to Charges, for twenty-six months | 29,159 43 |
| Making a total of | $846,916 23 |

Your petitioners further state that they have at various times presented their claims to the Congress of the United States, to wit, to the Thirty-fourth, Thirty-fifth, Thirty-seventh, and Thirty-eighth Congresses; that various reports have been made thereon and bills presented, as set forth in the proceedings of said Congresses, to which reference is hereby made, but that no relief was ever granted to your petitioners by said Congresses.

Your petitioners therefore pray judgment against the said United States for the said sum, with interest and the costs of the suit herein expended.

Your petitioners further state, that the said A. G. Sloo, George Law, Marshall O. Roberts, Bowes R. McIlvaine, Horace F. Clark, Elwood Fisher, and Edward N. Dickerson, as well as your petitioners, are each and every of them citizens of these United States; that they have at all times borne true faith and allegiance to the Government of the United States, and that they, nor any of them, have ever voluntarily aided or abetted or given encouragement to any rebellion against the said Government of the United States.

MARSHALL O. ROBERTS,
*Trustee and Agent.*
OWEN & WILSON,
*Attys. for Claimants.*

8 STATE OF NEW YORK,
*City and County of New York, ss:*

Marshall O. Roberts, one of the claimants herein, being duly sworn, says that no assignment or transfer of the claim set forth in the foregoing petition, or any part thereof, or any interest therein, has been made, excepted as in said petition stated; that said claimants are justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsetts; and that he believes the facts as stated in said petition are true.

MARSHALL O. ROBERTS,
*Trustee and Agent.*

Subscribed and sworn to before the undersigned, a notary public for the State, and residing in the city and county, of New York, this twenty-seventh day of February, eighteen hundred and sixty-six.

[SEAL.] J. R. CUMING,
*Notary Public, N. Y.*

STATE OF NEW YORK,
*City and County of New York, ss:*

I, William C. Conner, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, being a court of record, do hereby certify that J. R. Cuming, before whom the annexed deposition was taken, was, at the time of taking the same, a notary public of New York, dwelling in said city and county, duly appointed and sworn, and authorized to administer oaths to be used in any

court in said State and for general purposes, and that his signature thereto is genuine, as I verily believe.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the twenty-eighth day of February, one thousand eight hundred and sixty-six.

[SEAL.] W. C. CONNER, *Clerk.*

9 EXHIBIT A.

This agreement, made at the city of Washington, in the District of Columbia, this twentieth day of April, anno Domini eighteen hundred and forty-seven, between the United States of America, by the Secretary of the Navy thereof, and Albert G. Sloo, of the city of Cincinnati, in the State of Ohio, witnesseth: That whereas by the 4th section of an act of Congress approved March 3, 1847, entitled "An act providing for the building and equipment of four naval steamships," it is made the duty of the said Secretary of the Navy, upon certain terms and conditions in said act enumerated, to contract, on the part of the Government of the United States, with the said A. G. Sloo for the transportation of the United States mail from New York to New Orleans twice a month, and back, touching at Charleston, (if practicable,) Savannah, and Havana, and from Havana to Chagres, and back, twice a month: Now, therefore, the said A. G. Sloo does hereby agree with the United States aforesaid, and firmly binds himself to establish a line of steamships, to consist of at least five vessels, for the transportation of the United States mail from New York to New Orleans, twice a month, and back, touching at Charleston, (if practicable,) Savannah, and Havana, and from Havana to Chagres, and back, twice a month, according to the terms and meaning of said act of Congress; the said steamships to be of not less than fifteen hundred tons burden, and propelled by engines of not less than one thousand horse-power each, to be constructed under the superintendence and direction of a naval constructor in the employ of the Navy Department, and to be so constructed as to render them convertible, at the least possible expense, into war-steamers of the first-class; provided, however, that the Secretary of the Navy may, at his discretion, permit one of said steamships to be constructed of not less than six hundred tons burden, and engines in proportion.

And it is agreed by and between the parties aforesaid, that two of the said steamships shall be completed and ready for service on or before the first day of October, A. D. 1848, shall be of the burden (1,500 tons) above described, and shall be propelled by engines of direct action, similar to the engine of the late United States steamer Missouri; and each of said ships shall be constructed of approved materials and fastenings, upon the dimensions of the late steamship Missouri, as they are known and on record in the Navy Department of the United
10 Sta'es, reserving to said contractor the right to add a saloon-deck in said steamers, to add to their length not exceeding thirty feet, and breadth of beam not exceeding five feet, as may be necessary to give them the draught of water required by law for the service intended, and reserving to the contractor also the right to add two feet to the length of cylinder above provided for, so as to make the same seventy inches in diameter and twelve feet stroke; but in making any or all of the alterations here permitted from the plan of the Missouri aforesaid, the said contractor is not to disregard the general proportions of the steamships so to be constructed, but is to have reference to them, and to make the corresponding changes, in order to preserve them, which

may be required for the purpose, by his said alterations; and said ships shall be sheathed with copper of approved quality; shall have ample and convenient capacity for the accommodation of men and stores of every description; shall be well and thoroughly fitted with not less than three masts and the necessary spars, ropes, rigging, and canvass; shall be furnished and fitted with good and sufficient ground-tackle, chain and hempen cables, anchors, and hawsers, with iron side-wheels, with good and sufficient boilers, and coal-bins for a supply of twenty days, and with all the fixtures and findings properly belonging to steamships of the dimensions and character above recited. The said boilers and machinery are to be of the best quality, and to be so placed below the water-line as to be, as far as practicable, beyond the reach of cannon-shot; and the said steamers in strength, capacity, rigging, spars, engines, boilers, and in all other respects whatsoever, are to be similar to the United States ship Missouri as far as the alterations above permitted and a reasonable regard to the nature of the service contemplated will allow.

And it is further agreed by and between the parties aforesaid that, should the Secretary of the Navy determine to employ a steamer of not less than six hundred tons burden for the service between Havana and Chagres, in lieu of one of said five steam's of fifteen hundred tons, as provided in the fourth section of the act of Congress hereinbefore referred to, then the said A. G. Sloo will construct said steamships of the same material, build, and finish, with size, engine, and dimensions in proportion, (having regard to tonnage to the above-described ships,) and fully capable, in all respects, of performing the service and answering all the conditions required by said law.

11 And it is further agreed by and between the parties aforesaid, that the said contractor, A. G. Sloo, shall complete and have in readiness for service the two remaining steamships provided in the act aforesaid on or before the first day of October, A. D. 1849, to be constructed and fitted in every respect of the burden, capacity, power, and description of the two steamships first herein above described, with such improvements in model, engines, boilers, and finish as may be approved by the parties to this contract. And said line of steamships shall be kept up by alterations, repairs, or additions (of approved character) fully equal to the exigencies of the service and the faithful accomplishment of the purposes recited in said act; shall perform the services required by said act according to its true intent and meaning, and shall be in full and entire operation on or before the first day of October, A. D. 1849.

And it is further agreed by and between said parties, that each and all of said steamships shall be commanded by an officer of the Navy of the United States, not below the grade of lieutenant, to be selected by the said contractor, A. G. Sloo, with the approval and consent of the Secretary of the Navy, and to be accommodated on board thereof in a manner becoming his rank and station, without charges to the Government of the United States. And said A. G. Sloo further agrees to receive on board each of said steamships, and accommodate in a manner suitable to their rank, without charge to the Government of the United States, four passed midshipmen of the United States Navy to serve as watch-officers; and also to receive on board each ship, and suitably accommodate, without charge to the United States Government, an agent, to be appointed by the Postmaster-General, who shall have charge of the mails to be transported therein; safe and convenient apartments on board said ships being provided for said mails and agent by the said A. G. Sloo, contractor.

And the said United States of America, by the said Secretary of the Navy, in consideration of the premises, do hereby promise and agree to pay to the said A. G. Sloo, contractor, as a compensation for the service hereinbefore stipulated, the just and full sum of two hundred and ninety thousand dollars per annum, payable in quarterly payments, upon the full performance by the said Sloo of the service aforesaid, according to the meaning of said act of Congress and of this contract; and inasmuch as the said steamships will be completed at different periods,
12 respectively, within the time above limited, it is hereby understood and agreed by the parties aforesaid that each of said ships shall commence the mail service required as soon as she shall be in all respects ready therefor, according to the terms of this contract, and that a proportionate part of said compensation stipulated for the whole service aforesaid shall be paid to said A. G. Sloo for the partial service which may thus be rendered by the steamer or steamers which may as aforesaid be first completed; but no compensation shall, in any case, be paid for any period prior to the time when such steamships shall commence the actual performance of the service required by said act of Congress.

And it is further agreed by and between the parties aforesaid, that on tender of compensation by the said Government of the United States, not exceeding a due proportion of the pay herein stipulated, the said A. G. Sloo, contractor, shall convey any mail or mails of the said United States which he may be required to convey on any steamship which he, the said Sloo, may own, run, or control on the routes aforesaid beyond the number of trips herein specified.

And it is further agreed by and between said parties, that this contract shall continue in force for the term of ten years, to commence from the actual commencement of the service above specified; and the said Secretary of the United States Navy, for the time being, shall at all times, exercise control over said steamships, and shall, at any time, have the right to take them for the exclusive use and service of the United States, and to direct such changes in their machinery and internal arrangements as the said Secretary may require, the cost of such changes to be ascertained by the bills actually paid therefor, and the proper compensation of the value of the ships, when so taken as aforesaid, to be ascertained by appraisers to be mutually chosen by the parties aforesaid.

In testimony of all which agreements and stipulations, the parties above named have hereunto signed their names and affixed their seals this twentieth day of April, A. D. one thousand eight hundred and forty-seven.

A. G. SLOO. [L. S.]
J. Y. MASON, [L. S.]
*Secretary of the Navy.*

Signed, sealed, and delivered in the presence of—as to the sig-
13 nature of Albert G. Sloo, (the words "as principal and as his sureties," and the words "jointly and severally," first erased by black lines, and the word "themselves" altered to "himself," before signing)—

GEO. L. STORER.
J. Y. M.,
JOHN APPLETON.

EXHIBIT B.

Know all men by these presents that I, Albert G. Sloo, of the city of Cincinnati, in the State of Ohio, in consideration of one dollar, to me in hand paid by George Law, Marshall O. Roberts, and Bowes R. McIlvaine, of the city of New York, the receipt whereof is hereby acknowledged, and for divers other causes and considerations me thereunto moving, have assigned, transfer'ed, and set over, and by these presents do assign, transfer, and set over unto them, the said George Law, Marshall O. Roberts, and Bowes R. McIlvaine, a certain contract bearing date the twentieth of April, in the year one thousand eight hundred and forty-seven, and made and executed by and between the United States of America, by the Secretary of the Navy thereof, of the one part, and me, the said Albert G. Sloo, of the other part, for the establishment of a line of steamships for the transportation of the United States mail from New York to New Orleans, twice a month and back, and which contract is hereunto annexed, to have and to hold the said contract, and all my right, title, and interest therein, and in and to the moneys to be had and received by virtue thereof, and all the privileges, emoluments, benefits, and advantages thereunto belonging, subject, however, to the duties, services, and obligations therein specified to be performed by me to the Government of the United States, unto them, the said George Law, Marshall O. Roberts, and Bowes R. McIlvaine, and the survivors and survivor of them, their successors and assigns forever, upon the trusts, however, and for the uses and purposes expressed and declared in a certain deed or indenture bearing date the seventeenth day of August, one thousand eight hundred and forty-seven, made and executed by and between me, the said Albert G. Sloo, of the first part, and George Law, Marshall O. Roberts, and others, of the second part, and the said George Law, Marshall O. Roberts, and Bowes R. McIlvaine, of the third part, and which said indenture, so far forth as it relates to and declares the said trusts, is to be taken and deemed as part and parcel of these presents.

And I, the said Albert G. Sloo, do hereby covenant and agree to and with the said George Law, Marshall O. Roberts, and Bowes R.
14 McIlvaine that the said contract is now free and clear of and from all other and former grants, assignments, transfers, mortgages, and encumbrances whatsoever, and that I have good right and lawful authority to transfer and assign the same in manner aforesaid, subject to the approval of the Secretary of the Navy.

In witness whereof I have hereunto set my hand and seal this third day of September, in the year of our Lord one thousand eight hundred and forty-seven.

(Signed) A. G. SLOO. [L. S.]

Sealed and delivered in presence of—
(Signed) ROBERT GETTY.
A. IRVIN, Jr.

We, the undersigned, sureties for the fulfillment of the stipulations of the contract mentioned in the within assignment, executed by and between the United States of America, by the Secretary of the Navy thereof, on the one part, and Albert G. Sloo, of the other part, bearing date the twentieth day of April, one thousand eight hundred and forty-seven, do hereby covenant and agree to the foregoing assignment thereof by the said Albert G. Sloo to the within-named George Law, Marshall

O. Roberts, and Bowes R. McIlvaine, and that the said assignment shall in no manner affect our responsibility or liability as such sureties, in case of any neglect, default, or breach in the performance of the stipulations of the said contract or any of them, but that our liabilities as such sureties shall continue in the same manner and with the like effect as if the said assignment had not been made.

In witness whereof we have hereunto set our hands and seals this third day of September, in the year of our Lord one thousand eight hundred and forty-seven.

| | | |
|---|---|---|
| (Signed) | ROBERT C. WETMORE. | [L. S.] |
| " | MARSHALL O. ROBERTS. | [L. S.] |
| " | GEORGE LAW. | [L. S.] |
| | EDWIN CROSWELL. | [L. S.] |

Sealed and delivered in presence of—(the word "consent" being written over an erasure)—

(Signed) JAMES ANDERSON, to the signatures of Robert C. Wetmore, Marshall O. Roberts, George Law.

(Signed) J. I. JOHNSON, as the signature of Edwin Croswell.

EXHIBIT C.

This indenture, made the seventeenth day of August, in the year of our Lord one thousand eight hundred and forty-seven, between Albert G. Sloo, of Cincinnati, in the State of Ohio, of the first part, ——— Wetmore, Prosper M. Wetmore, George Law, and Marshall O. Roberts, of the city of New York, and Edwin Croswell, of the city of Albany, of the second part, and the said George Law, Marshall O. Roberts, and Bowes R. McIlvaine, of the city of New York, of the third part.

Whereas the Secretary of the Navy of the United States has made a contract, on the part of the Government of the United States, with the said party of the first part, for the transportation of the United States mail in steamships from New York to New Orleans and other places, and back to New York, pursuant to an act of Congress entitled "An act providing for the building and equipping of four naval steamships," approved March 3d, 1847, as by the said contract, bearing date the 20th day of April, 1847, a copy whereof is hereunto annexed, may more fully appear;

And whereas the said party of the first part hath applied to the said parties of the second part for aid to enable him to fulfill the terms and conditions of said contract, and the said parties of the second part have agreed to aid him, the said party of the first part, in the manner and on the terms and conditions hereinafter mentioned, upon his executing an assignment of the said contract to the said parties of the third part upon the trusts and for the uses and purposes hereinafter expressed and declared;

And whereas the said party of the first part has accordingly, by an instrument bearing even date herewith, and annexed to the said contract, assigned and transferred the said contract to the said parties of the third part upon trust, as aforesaid:

Now, therefore, this indenture witnesseth, that the said parties of the second part, in consideration of the said assignment in the said instrument and herein contained, and of the several covenants and agreements hereinafter contained, on the part of the said party of the first , do hereby covenant, promise, and agree, to and with the said party of the first part, that they will build, construct, finish, and completely equip the steamships which in and by the contract aforesaid are contracted to

be built by the said party of the first part, in such manner and
16 at such times as are or may be required by the Navy Department of the United States, and provide for and pay all the moneys necessary therefor; such steamships and their machinery to be built, constructed, equipped, and repaired under the superintendence and direction and control of George Law, one of the parties of the second part, and that they will in all things well and truly fulfill and perform all the duties and services which in the said contract are agreed to be done and performed by the said party of the first part.

And this indenture further witnesseth, that the said party of the first part, in consideration of the foregoing covenants and agreements by the said parties of the second part, and of one dollar to him in hand paid by the said party of the third part, the receipt whereof is hereby acknowledged, hath assigned, transferred, and set over, and by these presents doth assign, transfer, and set over, unto the said parties of the third part, and the survivors and survivor of them, their successors and assigns, the said contract so made and executed by the Secretary of the Navy on behalf of the United States, with the said party of the first part, as hereinbefore mentioned, and all his right, title, and interest therein, and in and to the moneys to be had and received by virtue thereof, and all the privileges, emoluments, benefits, and advantages thereunto belonging, subject, however, to the duties, services, and obligations therein specified to be performed by the said party of the first part, to have and to hold all and singular the said premises unto the said parties of the third part, and the survivors and survivor of their successors and assigns; upon the trusts, nevertheless, and for the uses and purposes, and with the several powers and duties, hereinafter expressed and declared.

And it is hereby mutually declared and agreed, by and between all of the parties to these presents, that these presents, and the assignment of the said contract hereinbefore mentioned to have been executed by the said party of the first to the said parties of the third part, bearing even date herewith and annexed to the said original contract, are and is upon the following trusts, and for the following uses and purposes, that is to say: Upon the trust that the said trustees shall cause the said steamships, as they shall from time to time be built, to be registered in their names, or in the names of the survivors or survivor of them, or their successors, and that they have the sole management and direction of the said ships, and of each of them, and of
17 their employment, subject, however, to the provisions of the said contract with the Secretary of the Navy, that they appoint and pay all such officers, agents, and other persons, as they may deem necessary or proper, either for the sailing or navigating of the said vessels, or for the management of the business thereof at the various ports or places at which they may trade or stop, on such terms, for such times, and with such powers and duties, as to them may seem fit, except, however, that the said party of the first part shall have the privilege of nominating the commanders of the said ships, and, by and with the consent of the said trustees, of appointing the same; that they make all the necessary contracts and agreements for the employment of the said vessels, and exercise and perform all such other powers and duties in the premises as may be necessary or proper either for performing the duties and services required by the Secretary of the Navy, or for the profit and advantage of the parties interested; and upon further trust that they collect and receive all the freights and earnings of the said vessels, and all sums which shall be paid by the Government of the

United States for the transportation of the mail, or for any other service which may be required by Government, and all other sums which may become due or payable on account thereof, and make all the disbursements of every kind incurred in the employment of the said vessels; and upon further trust, that the said trustees render to the said parties of the first and second part respectively, quarter yearly, an account, in writing, of all their receipts and expenditures in the discharge of their trust, the first of such account to be rendered at the expiration of three months from the commencement of service by the said steamships, or any of them, and that they apply the nett earnings which shall remain at the expiration of every quarter, after paying all the disbursements of the vessels and all the costs, charges, and expenses, of every kind, to which the said trustees may in any manner be subjected, or which are hereinafter declared to be a charge upon the joint funds, in the first place to the payment of the sum of twelve thousand five hundred dollars, quarterly, one half thereof to the said party of the first part, and the other half to the said parties of the second part, and the residue of such nett earnings to the repayment of all advances made by the said parties of the second part, rateably, in proportion to the amounts advanced by them respectively, in pursuance to the cove-
18 nants in this indenture contained, together with legal interest thereon, and a commission of ten per cent. on all sums advanced for building, equip'ing, and furnishing said vessels; and, lastly, upon trust, that when all the moneys advanced by the said parties of the second part, pursuant to this agreement, with interest and commissions as hereinabove provided, and all expenses and responsibilities of every kind incurred by them or by the said trustees shall be lawfully satisfied and paid, that the trustees then divide the nett earnings of the said vessels, including the sums to be received from the Government of the United States, quarterly, into two equal parts, whereof one part shall be paid to the said party of the first part or his legal representatives, and the other part to the said parties of the second part or their legal representatives, and that the said steamships or vessels shall be held by the said trustees in trust for the said party of the first part and his representatives, and the said parties of the second part and their representatives, in like manner, in equal shares; and it is also further mutually agreed by and between all the parties hereto, that the said Marshall O. Roberts and Edwin Croswell shall be joint agents, in the city of New York, for the transaction of the business of the said ships in the said city, under the direction and control of the said trustees; that the said Marshall O. Roberts shall receive as compensation for his services as agent the sum of ten thousand dollars per annum, and the said Edwin Croswell shall receive as a compensation for his services as agent the sum of five thousand dollars per annum, such payments to be made quarterly, and to be paid out of the joint funds of the concern, and to commence with the commencement of service by any one *and* of the said vessels.

It is also further mutually agreed, that the said George Law shall receive as a compensation for his services in constructing, equipping, and repairing said steamships, and their machinery the sum of five thousand dollars per annum, to commence as soon as the construction of said vessels shall be begun, and to be paid quarterly, out of the joint funds of the concern.

It is also agreed that the said Bowes R. McIlvaine shall receive as a compensation for his services as trustee the sum of five thousand dollars per annum, such sum to be paid quarterly out of the share of the

profits of the said party of the first part, to commence with the commencement of service by any one of said vessels.

It is also further agreed by and between the parties of the first and second parts that Arnold Harris shall be agent of the said vessels at New Orleans, subject to the approval and control of the trustees.

And it is also further mutually convenanted and agreed, by and between all the parties hereto, that in case the said George Law and Marshall O. Roberts, or either of them, shall die or shall resign, or become incapable of performing the duties of the office of trustee, the said parties of the second part, and the survivors and the survivor of them, shall appoint some suitable person or persons to fill the vacancy or vacancies thus occasioned, and thereupon the said contracts, and the said ships and the trust hereby created, shall be transferred and assigned in such manner as to substitute the said new trustee or trustees in the place of the trustee whose office has become vacant as aforesaid, with the like effect as if he had been originally named and appointed by these presents, and in case the said Bowes R. McIlvaine shall die or become incapable of acting, or shall resign, then the said party of the first part may appoint some fit person to be trustee in his place, who shall thereupon in like manner be substituted in the place of the said Bowes R. McIlvaine with the like effect as if he had been originally named in these presents.

It is also agreed that in case the said Edwin Croswell shall die or become incapable of acting, or shall resign, then the said party of the first part may appoint some other person as joint agent in the city of New York in the place of the said Edwin Croswell, such appointment to be subject to the approval of the said trustees, and that in case of the death, resignation, or inability to act of the said Marshall O. Roberts as agent, or the said George Law as naval constructor, then the said parties of the second part shall appoint their successor or successors, as the case may be.

It is also further agreed that at the expiration of the contract, made with the Secretary of the Navy as before mentioned, the said trustees shall sell and dispose of the said ships at public sale, giving at least sixty days' notice thereof, in two of the public newspapers printed in the city of New York, and divide the nett proceeds thereof, after defraying all the expenses of the sale and re-imbursing themselves all sums which may be due to them or for which they may be liable as trustees, or which then may be due to the said parties of the second part, between the several parties hereto, according to their several rights and interests therein, as hereinabove expressed, that is to say, one-half part to the said parties of the first part or his representatives, and the other half part to the said parties of the second part or their representatives.

And it is hereby further mutually agreed that the said trustees may consent to any modification of the said contract which the Secretary of the Navy may require, and which in the opinion of the said trustees may be advantageous to the parties of the first and second parts.

And it is also further agreed that the said parties of the second part may associate any other person or persons as parties in interest with them, who shall thereupon become entitle' to all the benefits of the said contract, and of the trust hereby created, in the like manner as if they had been originally named as parties hereto.

And the said parties of the third part hereby accept the said trust and covenant, and agree severally, and not jointly, to and with the said parties of the first and second parts, respectively, well and truly to perform and fulfill all the duties and services hereinabove imposed and re-

quired, provided, however, and it is expressly understood and agreed, that the said trustees shall not be liable for any more money than they shall actually receive under and by virtue of these presents, nor for the failure or misconduct of any officer or agent employed by them in good faith, nor for the loss, miscarriages, or misapplication of any moneys received or transmitted by or to them, or any person or persons employed in the management of the business of the trust, nor for acts, defaults, and misconduct of each other, but each for his own acts, defaults, and misconduct only.

And it is hereby further mutually agreed that any modification, renewal, or continuance of the said contract at any time obtained from Congress or the Naval Department, by either or any of the parties to these presents, shall enure to the joint and common benefit of the parties hereto respectively, their representatives or assigns, in the proportion of their respective interests as hereinabove set forth.

In witness whereof the said parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

A. G. SLOO.
GEORGE LAW.
MARSHALL O. ROBERTS.
EDWIN CROSWELL.
21 PROSPER M. WETMORE,
By his attorney, ROBERT C. WETMORE.
B. R. McILVAINE.

Sealed and delivered in the presence of—
JOHN L. MASON.

CITY AND COUNTY OF NEW YORK:

On this seventeenth day of August, in the year of our Lord one thousand eight hundred and forty-seven, before me personally appeared John L. Mason, to me known, who, being by me duly sworn, did depose and say that he resides in the city of New York; that he is acquainted with A. G. Sloo, George Law, Marshall O. Roberts, Edwin Croswell, Robert C. Wetmore, attorney of Prosper M. Wetmore, and B. R. McIlvaine, and knowing them to be the same persons described in and who executed the within indentures; that they executed the same in his presence; that they acknowledged to him that they executed the same; and that he signed his name as a subscribing witness thereto.

BENJAMIN H. JARVIS,
*Commissioner of Deeds.*

EXHIBIT D.

This indenture, made and entered into the eighth day of July, one thousand eight hundred and fifty, by and between George Law, Marshall O. Roberts, Edwin Croswell, and Prosper M. Wetmore, of the city of New York, of the first part, and the United States Mail Steamship Company, a corporation under and by virtue of an act of the legislature of the State of New York, and doing business in the said city of New York, of the second part, witnesseth as follows, to wit:

Whereas the said parties hereto of the first part heretofore, on the seventeenth day of August, one thousand eight hundred and forty-seven, became parties of the second part to an indenture of that date, to which Albert G. Sloo, of Cincinnati, Ohio, was the party of the first part, and the said George Law, Marshall G. Roberts, and Bowes O. McIl-

vaine, were parties of the third part, a copy of which said indenture is hereto annexed, and is hereby made part of these presents, and referred to for a full specification of the particulars therein contained, in which said indenture the said parties hereto of the first part undertook and agreed to furnish, build, and equip and deliver to the said parties thereto of the third part, as trustees, certain steamships, for the purposes therein particularly mentioned, and to do and perform other things therein mentioned;

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And whereas, in and by the same indenture, and also in and by another instrument bearing date the third day of September, one thousand eight hundred and forty-seven, the said Albert G. Sloo assigned, transferred, and set over to the said above-named trustees a certain agreement, bearing date the twentieth day of April, one thousand eight hundred and forty-seven, between the United States of America (by the Secretary of the Navy) and the said Albert G. Sloo—a copy of which agreement is also hereunto annexed—to be held by the said George Law, Marshall O. Roberts, and Bowes R. McIlvaine, as trustees, for the uses and purposes in the said indenture of the seventeenth day of August particularly mentioned;

And, whereas, in and by a certain other indenture, bearing date the seventh day of February, one thousand eight hundred and fifty, made by and between the said Albert G. Sloo, of the first part, and the said George Law, Marshall O. Roberts, Edwin Croswell, and Prosper M. Wetmore, of the second part, the aforesaid indenture of the seventeenth of August, 1847, and the rights, duties, and obligations of the parties thereto of the second part under the same, were modified—

Under and by virtue of which said indentures of the seventeenth of August and seventh of February, above mentioned, certain earnings and profits are directed to be divided and paid to the said parties hereto of the first part; and in pursuanee of the aforesaid indentures and agreements, the said parties hereto of the first part have furnished and delivered to the aforesaid three trustees three steamships, called respectively the "Ohio," the "Georgia," and the "Falcon," and the said ships are now running, under the direction of the said trustees, and engaged in the transportation of the United States mail under the said agreement with the United States, and in the transportation of passengers and freight:

Now, therefore, these presents witness, that the parties hereto of the first part, in consideration of the sum of one million one hundred and thirty-two thousand four hundred and forty dollars and forty-seven cents, paid to them severally in the following proportions, to wit:

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|---|---|
| To the said George Law, seven hundred and twenty-three thousand four hundred and seventy dollars and ninety-one cents | $723,470 91 |
| To the said Marshal O. Roberts, one hundred and ninety-two thousand five hundred and ninety dollars and thirty-one cents | 192,590 31 |
| To the said Prosper M. Wetmore, one hundred and eight thousand six hundred and nine dollars and thirty-six cents | 108,609 36 |
| And to the said Edwin Croswell, one hundred and seven thousand seven hundred and sixty-nine dollars and eighty-nine cents | 107,769 89 |
| | 1,132,440 47 |

the receipt whereof from the parties hereto of the second part they do hereby acknowledge, have bargained and sold, and by these presents do assign, transfer, and set over unto the parties hereto of the second part and their successors, all and every their joint and several interests in the said three steamships, Ohio, Georgia, and Falcon, and in the aforesaid agreement between Albert G. Sloo and the United States, and in the before-mentioned indentures of the seventeenth of August and seventh of February; and in all the moneys, earnings, mail-pay, and profits which, according to the provisions of the last above-named two indentures, shall become payable to them, the said parties thereto of the second part, or either of them; but expressly excepting and reserving to themselves all and every the earnings, profits, and mail-pay earned by the said ships, and in any manner payable or hereafter to become payable to them jointly as aforesaid, down to the seventh day of May now last past, on which day the interest hereby transferred to the parties hereto of the second part shall, for all purposes of accounting with the said trustees, be deemed to have accrued.

And further expressly reserving to the said George Law, Marshall O. Roberts, and Edwin Croswell all their several and respective sala-
24 ries provided for and agreed to be paid to them severally by the said trustees according to the above-mentioned indentures, to continue in the same manner and to the same extent as if these presents had not been made, so long as they shall respectively be employed as superintendents or agents under the said agreements; and in like manner reserving to them their several rights and privileges, that is to say, to the said George Law to superintend the construction, building, and repairing from time to time, under his own sole control, of all the steamships which have been or may be built or furnished to the said trustees, or held by them under the aforesaid indentures, and to receive his salary therefor; and to the said Roberts and Croswell to be agents of the said ships in New York, and to receive their respective salaries therefor, until by the concurrence of the said Albert G. Sloo and the said parties hereto of the second part the employment of the said Law, Roberts, and Croswell, or either of them, shall be dispensed with, and thereupon and thereafter the said respective salaries of the parties whose employment shall be discontinued shall belong and be paid to the parties hereto of the second part. It being the intent of these presents, that if the said parties hereto of the second part can procure the consent of the said Albert G. Sloo, they shall have the full and free right and privilege of appointing and employing, and paying such agents and superintendents as they may think proper, and shall in that event receive the money reserved to the said Law, Roberts, and Croswell as salaries by the aforesaid indentures.

And in like manner and upon the like conditions, the parties hereto of the first part hereby transfer and assign to them, the said parties hereto of the second part, and their successors, all the rights and powers to appoint trustees to fill a vacancy or vacancies in the office of trustee under the said indenture of the seventeenth day of August, and in the office of agent in the city of New York, and in the office held by the said George Law, as naval constructor and superintendent, and all and every the other rights and powers which in and by either or both of the said indentures are reserved, given, or secured to the parties hereto of the first part jointly as parties to the said indentures of the second part.

And in like manner they authorize and direct the trustees aforesaid to account to and with the said parties of the second part and their successors, (in the place and stead of them, the parties hereto of the first

part jointly,) quarter yearly, as in and by the last above-mentioned
25 indentures provided, and to pay to them all moneys, profits, mail-pay, earnings, and proceeds of the said ships which are earned from and after the said seventh day of May last past, and by such indentures are payable to the parties hereto of the first part, including as well the quarterly sum of six thousand two hundred and fifty dollars, as also the repayments (out of net earnings subsequent to the said seventh of May) of advances, interest, and commissions, and the final equal share or moiety of the mail-pay, earnings, and profits, and of the ultimate proceeds of sale of the said ships, which, according to the provisions of the said indenture, would be and become payable to the parties hereto of the first part jointly as aforesaid. And also such salaries as aforesaid as may have ceased to be payable to either of the parties hereto of the first part under the stipulations herein contained.

And inasmuch as the title to a portion of the aforesaid steamship Falcon is now subject to a lien thereon, to secure the payment of certain moneys due and payable by the said George Law, in the month of November in this present year: Now, therefore, the said George Law, severally, on his own behalf, hereby covenants and agrees to and with the said parties hereto of the second part, that he will pay off and discharge the said lien, and will fully protect, indemnify, and save the said trustees, and the parties hereto of the second part against the same, and of and from the payment of any money, costs, counsel fees, charges, or expenses for, on account, or by reason thereof.

And further, inasmuch as the said two steamships, Ohio and Georgia, were heretofore pledged to the United States, by deed of trust, to Prosper M. Wetmore, as trustee for the United States in that behalf, to secure the payment of the sum of two hundred and ninety thousand dollars: Now, therefore, the said George Law, Marshall O. Roberts, Edwin Croswell, and Prosper M. Wetmore, severally and not jointly, each for himself and his heirs, executors, and administrators, (and not the one for the others, or any other of them,) doth hereby covenant, promise, and agree to and with the said parties of the second part, and their successors, that either out of his share or proportion of the mail-pay, earnings, and profits, earned on or prior to the said seventh day of May last past, or out of other of his own moneys, he will pay off and discharge his proportion of the said sum of two hundred and ninety thousand dollars, and any interest it may be necessary to pay in
26 satisfaction and towards the discharge of the said pledge; that is to say, the said George Law, that he will so pay off and discharge one hundred and forty-five thousand dollars of the said sum and the like share of such interest, if necessary, as aforesaid. The said Marshall O. Roberts, that he will so pay off and discharge fifty five thousand dollars of the said sum, and the like share of such interest, if necessary, as aforesaid. The said Edwin Creswell, that he will so pay off and discharge forty-five thousand dollars of the said sum, and the like share of such interest, if necessary, as aforesaid. And the said Prosper M. Wetmore, that he will so pay off and discharge the remaining forty-five thousand dollars of the said sum, and the like share of such interest, if necessary, as aforesaid.

And the said parties hereto of the second part, in consideration of the foregoing, do hereby covenant, promise, and agree to and with the said parties of the first part, *and* they, the said parties of the second part, shall and will build, construct, finish, and completely equip all and every the steamships which in and by the contract aforesaid, with the United States, are contracted to be built by the said Albert G. Sloo, in

such manner and at such times as are or may be required by the Navy Department of the United States, and provide for and pay all the moneys necessary therefor. The said parties of the second part, nevertheless, to have the full benefit therein of the building and furnishing of the said three steamships, Ohio, Georgia, and Falcon, as the same have already been placed in the hands of the said trustees, so far forth as the same may amount to a compliance with the said contract.

And, also, that all and every the said steamships and their machinery, already built, purchased, or constructed, or to be built, constructed or furnished, are to be and shall be built, constructed, equipped, and from time to time repaired, under the sole and exclusive superintendence, direction and control of the said George Law, subject only to such supervision and control as is reserved to the United States or the Secretary of the Navy, by the said contract with the United States, unless and until the services of the said George Law, as such superintendent, shall, by the concurring consent of the said Albert G. Sloo, and the parties hereto of the second part, have been dispensed with as aforesaid, and no longer.

And, also, that they, the said parties hereto of the second part, and their successors, shall and will in all things well and truly fulfil and perform all the duties and services which, in the said contract with the United States, are agreed to be done and performed by the said Albert G. Sloo.

And, also, that they, the said parties hereto of the second part, and their successors, shall and will well and truly do, perform, and fulfil all and every the covenants, agreements, and stipulations contained
27 in the aforesaid indentures of the seventeenth day of August, and seventh of February, respectively, to be done, performed, and fulfilled by the parties hereto of the first part, jointly, as parties to the said indentures of the second part.

And, also, that they, the said parties of the second part, and their successors, shall and will, from time to time, and at all times hereafter, fully protect, indemnify, and save harmless them, the said parties hereto of the first part, and their heirs, executors, and administrators, against their said agreements by them jointly made in and by the above-recited indentures, or agreements, or either of them, and of and from all damages, costs, charges, counsel-fees, sums of money, and expenses of every nature which they, or any or either of them, shall or may at any time hereinafter be in anywise put to, for or on account or by reason of their making, entering into, or becoming jointly bound by the above-recited indentures and agreements, or either of them, or for, or on account, or by reason of anything which may be done, or performed, or neglected, or omitted to be done or performed under the same.

And, also, that the said Marshall O. Roberts and Edwin Croswell shall be joint agents in the city of New York, as provided in the said indenture of the seventeenth day of August, 1847, and shall receive from the said trustees the compensation therefor, severally, as therein provided, unless and until their services shall be dispensed with by the said concurring consent of the said Sloo and the said parties of the second part, as aforesaid, and no longer.

And, also, that the said George Law shall receive from the said trustees, as a compensation for his services in constructing, equipping, and, from time to time, repairing the said steamships built, or hereafter to be built or furnished, and their machinery, the annual compensation in the last-mentioned indenture provided, so long as his services therein shall be required, as aforesaid, and no longer.

And, also, that they will begin, carry on, and complete the steamships hereafter to be built within the times and by the investment therein of the requisite amounts of money, fully to comply with and perform the aforesaid agreement of the seventh of February last, although they, the said parties of the second part, are to receive from the said trustees none of the earnings, mail-pay, or profits earned prior to the seventh day of May last.

And whereas the said George Law, Marshall O. Roberts, and Edwin Croswell, together with Robert C. Wetmore, did become sureties for the faithful fulfilment of the stipulations on the part of the said Albert G. Sloo, contained in the aforesaid contract with the United States, and as such sureties entered into and executed an obligation to the United States for that purpose, it is therefore, in consideration of the foregoing, further hereby expressly covenanted and agreed by the said parties hereto of the second part, for themselves and their successors, that they, the said parties hereto of the second part, and their successors, shall and will, from time to time and at all times hereafter, fully protect, indemnify, and save harmless the said above-named sure-
28 ties, and each of them, and their heirs, executors, and administrators, against their said obligation and suretyship, and of and from all damages, costs, charges, counsel-fees, sums of money, and expenses of every nature which they, or any or either of them, shall or may at any time be in any wise put to, for, on account, or by reason of their having become bound as sureties, as aforesaid; and will well and truly do, perform, and pay all moneys and all other things which such sureties, or either of them, may or can be required to do, perform, or pay, (by reason of having become bound as sureties, as aforesaid,) in any event whatever.

Inasmuch as the mail-pay for services of the said ships down to the said seventh day of May last, and certain of the earnings to that day have not yet been received and entered in the accounts relating to the said ships, but the same will, when received and entered as between the parties hereto of the first part, and the said Albert G. Sloo, be applicable to the account of re-imbursement of the cost of the said ships and the interest and commission thereon; it is, therefore, to prevent future misapprehension, expressly declared that the assignment hereby made is subject to such application and to the full and final adjustment of all the accounts between the parties, according to the rights existing between them, on the said seventh day of May, to be duly adjusted and entered when the earnings and mail-pay, down to that date, shall be realized; and if, when such accounts are adjusted, the owners of the steamship Falcon, prior to her delivery to the said trustees, shall not have been fully re-imbursed, all her earnings and mail-pay, down to that date, with interest thereon, according to the provisions of an agreement between the several four parties hereto of the first part among themselves, bearing date the seventh day of February last, the deficiency in such re-imbursement shall, notwithstanding anything herein contained, be paid to the said owners of the Falcon, as therein provided, and be charged to the parties hereto of the second part by the said four parties, severally and respectively, in the proportions in which they, by the tenor of such last-named agreement, would have contributed out of the earnings subsequent to the said seventh day of May, to make up and complete such re-imbursement.

And it is further mutually agreed that all claims for damages by reason of any collision happening in the running of the said steamships, or either of them, at any time prior to the said seventh day of May, or

hat have arisen or may arise in or out of the conduct of the said vessels, or the business thereof, prior to the last-named day, from any cause whatever, shall, when established, together with all the costs and expenses of every kind incurred, or which may be incurred, in defending any lawsuits relating to such claims, or prosecuting any appeals therein, be paid, in the first instance, by the aforesaid trustees as expenses, as the same may from time to time be ascertained and determined; the same to be, nevertheless, so charged by them to the account of the said Albert G. Sloo and of the several parties hereto of the first part, that they
29 shall severally bear and sustain their several just proportion thereof to the same extent as under the several agreements existing between them, herein referred to, and a supplemental agreement with the said Sloo, dated the seventh day of February, (not hereinbefore mentioned,) they would bear, had the same been ascertained, determined, and paid on the said seventh day of May last.

In witness whereof the said parties to these presents of the first part have hereunto set their hands and seals, and the parties of the second part have caused there corporate seal to be hereunto affixed, and these presents to be attested by their president, directors, and secretary, by virtue of a resolution of the board of directors, (passed July 8th, 1850,) the day and year first above written.

GEORGE LAW. [SEAL.]
MARSHALL O. ROBERTS. [SEAL.]
EDWIN CROSWELL. [SEAL.]
PROSPER M. WETMORE. [SEAL.]

Sealed and delivered in the presence of—
T. SPENCER KIRBY.
GEO. E. FAIRCHILD.

By order of the board of directors of the United States Mail Steamship Company.

GEORGE LAW,
*President.*

[SEAL.]

MARSHALL O. ROBERTS,
JAS. VAN NOSTRAND,
EDWIN CROSWELL,
MINER C. STORY,
*Directors.*
PROSPER M. WETMORE,
*Secretary.*

(Endorsed:) Filed March 2d, 1866.

30 *Demurrer.*

In the United States Court of Claims. December term, 1866.

MARSHALL O. ROBERTS AND OTHERS
*vs.*
THE UNITED STATES.

And said defendants, by John J. Weed, its solicitor, comes and says that the said claimants' petition, and the matters & things therein stated and set forth, are not sufficient in law for the said claimants to

have or maintain their aforesaid action against the said defendant'. Wherefore the said defendant' prays judgment.

JOHN J. WEED,
*Asst. Solr. Court of Claims.*

(Endorsed:) Demurrer to petition. Filed May 23, 1866.

31 *Answer.*

THE UNITED STATES
*ats.*
MARSHALL O. ROBERTS AND OTHERS.

And the said defendants, by John J. Weed, *its* solicitor, now come & make answer to the petition of the claimant', on file, & not admitting the same or any part thereof, do*th* hereby most expressly deny each and every allegation therein contained, & call for strict proof of the same.

And to so much of said petition as sets forth and avers that the United States is indebted to said claimant' in the sum of eight hundred and forty-six thousand nine hundred & sixteen $\frac{23}{100}$ dollars, the defendants say they are not indebted to said claimants in said sum of money, nor any part thereof.

JOHN J. WEED,
*Assistant Solicitor for the United States.*

(Endorsed:) Filed Nov. 1, 1866.

32 Court of Claims of the United States, December term, 1870.

MARSHALL O. ROBERTS ET AL.
*vs.*
THE UNITED STATES. No. 2221.

*Motion to amend petition.*

Now comes the plaintiff', and moves the court for leave to file the hereto-attached paper as an amendment and supplement to their original petition, heretofore filed in this case.

THOMAS WILSON,
*Attorney for Plaintiffs.*

(Endorsed:) Filed December 12, 1870; allowed December 19, 1870.

Claimants say that since the last continuance of this cause they have procured to be passed by Congress the following act, to wit:

[Private, No. 108.]

An act for the relief of the trustees of Albert G. Sloo.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the claim of the trustees of Albert G. Sloo, for compensation for services in carrying the United States mails by steamers direct between New York and Chagres and New Orleans and Chagres, in addition to the regular service required under the contract made between the said Albert G. Sloo

and the United States, be, and the same is hereby, referred to the Court of Claims, and the said court is hereby directed to examine the same, and determine and adjudge whether any, and, if any, what, amount is due said trustees for said extra service: Provided,
33 That the amount to be awarded by said court shall be upon the basis of the value of carrying other first-class freight of like quantity with the mails actually carried between the same ports at the same time.

Approved July 14, 1870.

And claimants aver that said act of Congress is in full force and effect, and pray that the same may be considered in this case.

Claimants further aver that the mails by them actually carried, in manner as stated in their original petition, was of the value of carrying express matter and other first-class freight; there was no appreciable difference of like quality between the same ports, and they are entitled to be paid therefor as in their said first petition claimed, and pray the judgment of the court accordingly. They file this in addition and as a part of said original petition.

THOMAS WILSON,
*Attorney for Claimants.*

STATE, COUNTY, AND CITY OF NEW YORK:

Personally came before me Marshall O. Roberts, who on oath says that the above amended petition and the facts therein stated he believes to be true.

MARSHALL O. ROBERTS.

Subscribed and sworn to before me this 9th day of December, A. D. 1870.

Witness my hand and official seal.

[SEAL.] CHARLES NETTLETON,
*Commissioner U. S. Court of Claims, N. Y. City.*

(Endorsed:) Filed December 19, 1870.

34 In the Court of Claims of the United States.

M. O. ROBERTS
*vs.*
THE UNITED STATES. } No. 2221.

*Special plea for defendants.*

And the said defendants, by their Attorney-General, now come, and, by leave of court, (as expressed in Rule IX,) say that the said claimant' ought not further to maintain said action, because—

1. While the claim presented in this petition is such as is ordinarily settled in an Executive Department, the petition does not set forth the decision thereon of the proper Department of the Government to which application was (as is alleged) made for the payment of the claim. (Rule II.)

2. The petition does not set forth a full statement of the action, on the claim therein presented, by a Department of the Government, as required by section 1 of the act of February 4, 1855.

3. The evidence in the case does not show that any such application

has ever been made to any Department of the Government, whether with or without success, or any action whatever thereon, without which action this court has no lawful jurisdiction in this case.

And the said defendants pray judgment, &c.

THOMAS H. TALBOT,
*Assistant Attorney-General.*

(Endorsed:) Filed Jany. 11, 1871.

35 *Replication.*

In Court of Claims, December term, 1870.

MARSHALL O. ROBERTS ET ALS.
*vs.*
THE UNITED STATES. } No. 2221.

Now comes the plaintiff', and for replication to the various pleas of defendant denies each and every allegation therein contained contrary to or inconsistent with the plaintiffs' petition.

THOMAS WILSON,
*Attorney for Plaintiff'.*

(Endorsed:) Filed Jany. 31, 1871, & ordered that the filing date as of January 14, 1871, when the case was submitted.

36 *Mo. for leave to file amended petition.*

In the Court of Claims.

MARSHALL O. ROBERTS ET ALS.
*vs.*
THE UNITED STATES. } No. 2221.

Now come the plaintiffs & move the court for leave to file their amended petition herewith presented.

THOMAS WILSON,
*Attorney for Plaintiffs.*

(Endorsed:) Filed Nov. 4, 1874. "Allowed, the defendant's counse[1] offering no objection."

37 United States Court of Claims, December term, A. D. 1874.

MARSHALL O. ROBERTS AND EDWARD N. DICKERSON, surviving trustees of A. G. Sloo,
*vs.*
THE UNITED STATES. } (Endorsed:) No. 2221. Filed November 4, 1874. J. R.

*Amended petition.*

To the honorable the Court of Claims:

Now come the plaintiffs in the above-entitled cause, and by leave of court first had and obtained file this their amended petition in said cause, and your petitioners, Marshall O. Roberts and Edward N. Dickerson, sur-

viving trustees of Albert G. Sloo, respectfully represent unto your honorable court:

I. That by act of Congress approved March 3, 1847, (9 Stat. L., 187,) it was made the duty of the Secretary of the Navy, upon certain terms in said act specified, to contract with Albert G. Sloo, of Cincinnati, in the State of Ohio, to transport the United States mails from New York to New Orleans, touching at Charleston, (if practicable,) Savannah, and Havana and back, twice in each month, and from Havana to
38 Chagres and back, twice in each month; that on the twentieth day of April, A. D. 1847, the said act of Congress was carried into effect by the making and execution of a contract, signed, sealed, and delivered between the said Albert G. Sloo, on the one part, and the United States Government, acting by and through Hon. J. Y. Mason, Secretary of the Navy, of the other part, a copy of which contract is hereto appended, marked "A," and made part hereof.

By said contract and the terms thereof, the said Albert G. Sloo did agree and bind himself, among other things set forth, as by contract will appear, to establish a line of steamships, to consist of at least five vessels, for the transportation of the mails of the United States from New York to New Orleans, twice a month and back, touching at Charleston, (if practicable) Savannah and Havana, and from Havana to Chagres, twice a month and back; that said steamships were not to be less than fifteen hundred tons burthen, and to be propelled by engines of not less than one thousand horse-power each. The size, kind, make, build, and a particular description of said steamships was in said contract specified and set forth; that said specifications were so made to the end that the said steamships might, at the least possible expense, be converted into war-vessels of the first class, and the United States steamer Missouri was agreed upon as a model.

It was further agreed that each and all of said steamships should be commanded by an officer of the Navy, not below the grade of lieutenant, to be selected by the said Sloo, with the approval of the Secretary of the Navy, and to be accommodated in a becoming manner without charge to the United States; that the said Sloo should receive on board each of said steamships, and accommodate in a suitable manner, four passed midshipmen of the Navy, to serve as watch-officers, and also an agent to be appointed by the Postmaster-General, who should have charge of the mails to be transported therein, and that safe and
39 suitable apartments should be provided on board said ships for said mails and agent by the said Sloo.

It was further agreed that in consideration of the premises the United States did agree to pay to the said Sloo, as compensation for the said transportation of the mails as above specified and set forth, the just and full sum of two hundred and ninety thousand dollars ($290,000) per annum, payable in quarterly instalments, upon the full performance of the service aforesaid.

It was further agreed that on tender of proper compensation by the Government of the United States, not exceeding a due proportion of the pay therein stipulated, the said Sloo should convey any mails of the United States which he might be required to convey on any steamship which he might own, run, or control on the routes therein specified, beyond the number of trips required by said contract.

It was further agreed that the steamships required under said contract should be finished and completed, the service begun, and the contract in all its requirements should be in full operation on or before the 1st day of October, A. D. 1849, and that it should remain and continue

in full operation, and the services required under it should continue for the space and term of ten years.

It was also agreed that for the time being the Secretary of the Navy should exercise control over said steamships, and should have the right to take them for the exclusive use and service of the United States, the proper compensation of the value of the ships to be ascertained by appraisers mutually chosen.

At the time of or before the execution and signing of said contract aforesaid, the United States required sureties from the said Sloo for the faithful performance of his said contract, whereupon George Law, Marshall O. Roberts, Edwin Croswell, and Robert C. Wetmore became such sureties, and executed their bond to the United States as such.

40 II. Your petitioner further represents that on or about the 17th of August, A. D. 1874, (the duplicate was dated September 3d,) the said Albert G. Sloo assigned, transferred, and set over unto George Law, Marshall O. Roberts, and Bowes R. McIlvaine, all of New York, all his right, title, and interest in and to said contract, (this was before assignments and transfers of such contracts were prohibited by law,) and in and to the moneys to be had or received by virtue thereof, and to all the privileges, emoluments, and benefits thereunto belonging, subject, however, to the duties, services, and obligations specified to be performed by him, the said Sloo, to the Government of the United States, unto them, the said George Law, Marshall O. Roberts, and Bowes R. McIlvaine, and to the survivor or survivors of them, their successors and assigns, forever, upon the trusts, however, and for the uses and purposes expressed and declared in a certain indenture or deed of trust bearing date the seventeenth day of August, A. D. 1847, made and executed by and between said Albert G. Sloo, of the first part, George Law, Marshall O. Roberts, Prosper M. Wetmore, by his attorney, Robert C. Wetmore, and Edwin Croswell, of the second part, and George Law, Marshall O. Roberts, and Bowes R. McIlvaine, trustees, parties of the third part. Copies of this assignment and deed of trust are hereto attached, marked "Exhibit B" and "Exhibit C," respectively, and made part hereof. The assignment was recognized, acknowledged, and ratified by the United States.

By the terms of said deed of trust it was stipulated and agreed, among other things therein set forth, that the said party of the first part, by virtue of the said assignment, did assign, transfer, and set over unto the parties of the third part, all his right, title, and interest in and to said contract, as by the said assignment will appear; and the parties of the second part stipulated and agreed and bound themselves to build, construct, finish, and completely equip the steamships which in and by the contract of April 20, 1847, between the United States and said A.

41 G. Sloo were contracted to be built by the said Sloo, party of the first part, in such manner and at such times as might be required by the Navy Department of the United States, and provide for and pay all the moneys necessary therefor. And it was mutually declared and agreed that the said assignment, made by the party of the first part, and the contents and agreements of the parties of the second part, in the said deed set forth, were made and were to be upon certain trusts therein declared, among which were the following: that the said parties of the third part, to wit, the trustees, who were these plaintiffs or their predecessors, should cause the said steamships, as they were built, to be registered in their names, or in the names of the survivor or survivors of them, or their successors, and that they should have the sole management of said ships and each of them and their em-

ployment, subject, however, to the provisions of the said contract between the United States and said Sloo; that they should appoint and pay all necessary and proper officers and persons; that they should make all the necessary contracts and agreements for the employ of said vessels, and exercise and perform all such other powers and duties in the premises as might be necessary for performing the duties and services required, or for the profit and advantage of the parties interested; and upon the further trust that they should collect and receive all the freights and earnings of the said vessels, and all the sums which should be paid by the Government of the United States for the transportation of the mail, or for any other service which might be required by the Government, and all other sums which might become due or payable on account thereof, and make all the disbursements of every kind incurred in the employment of said vessels; and upon the further trust that the said trustees should render to the parties of the first and second part, respectively, quarter-yearly, an account in writing of all their receipts and expenditures, in discharge of their trust, and that they should apply the net earnings that should remain at the expiration of every quarter in a certain manner, and to the certain persons therein set forth and described. It further provided for the pay of the said trustees, and for the appointment of the necessary agents at the various places, and for a naval constructor in New York, and for their pay. Provision was made for the appointment of new trustees, or agents, or naval constructor in case of the death, resignation, or inability to act of any of the persons then appointed.

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It was agreed that at the expiration of the contract made between the United States and said Sloo, that the said trustees should sell and dispose of the said ships at public sale, and the manner of sale and the division of proceeds was pointed out. It was further agreed that the said trustees might consent to any modification of the said original contract which might be required, and that any modification, renewal, or continuance of said contract, obtained by either or any of the parties, should inure to their joint and common benefit, or to their representatives or assigns, in the proportion of their respective interests as therein set forth.

It was also agreed that the parties of the second part might associate any other person or persons as parties in interest with them, who should thereupon become entitled to all the benefits of the said contract and of the trust thereby created, in the like manner as if they had been originally named as parties thereto.

III. By virtue of, and in accordance with the clause in said agreement last above mentioned, to wit, the provisions for the association with them, by the parties of the second part, of any other person or persons, on or about the eighth of July, 1850, the said George Law, Marshall O. Roberts, Prosper M. Wetmore, and Edwin Croswell assigned and transferred unto the United States Mail Steamship Company (a corporation established and created by the laws of the State of New York, (73d session, April 6, 1850, p. 323,) of which "George Law, Marshall O. Roberts, and their associates" were the corporators) all their right, title, and interest in and to the said contract between the United States and said Sloo, which said assignment was in writing and is hereto appended, made part hereof, and marked "Exhibit D," reference unto the same being hereby made.

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By the terms and provisions of the said indenture of July 8, 1850, (Exhibit D,) and in accordance with the aforesaid clause in the deed of trust, (Exhibit C,) the said United States Mail Steamship Company be-

came and were substituted for the parties of the second part in the deed of trust of August 17, 1847, (Exhibit C,) and it became liable, and agreed as such, to well and truly perform and fulfill all and every covenant, agreement, and stipulation contained in the indenture of the 17th of August, which it required the parties of the second part thereto, to wit, the said Law, Roberts, Wetmore, and Croswell, to do, perform, or fulfill.

IV. In accordance with the terms and provisions of the aforesaid indenture of August 17, 1847, (Exhibit C,) the parties of the second part proceeded to build, construct, and equip the steamship required under the original contract between the United States and said Sloo. Pending the completion of the entire number required, the indenture of July 8, 1850, was made, and thereafter that of January 21, 1851. Under the provisions of these two indentures the steamships required under the original contract were fully completed and equipped, and were, by their builders, transferred to the trustees, and by them registered in their own names, as trustees, under the deed of trust. These steamships, so built, constructed, equipped, and registered as those required under the original contract made between the United States and said Sloo, were named the Ohio, Georgia, Falcon, and Illinois, and when so built, constructed, equipped, and registered, were tendered to and accepted by the United States as in lieu of the five vessels required under the said original contract, because they were larger. There was in these four steam-
44 ships more tonnage than in the five called for in the contract.

Your petitioners further represent, that none of said steamships were ever taken for the exclusive use and service of the United States at the appraisement, &c., as provided in the last clause of the original contract, but that they continued to be used by the said trustees and their successors, i. e., your petitioners, in the carrying of the mail on the said routes between New York and New Orleans and Chagres during the ten years provided for in said contract, and were used up in said service and sold by the trustees, and the proceeds arising from their sale, as well as their earnings during their running, and including the mail-pay, went into and formed part of the trust-fund, and were distributed by the trustees in accordance with the provisions of the deed of trust. They further represent and allege, that they and their predecessors, as trustees, begun, carried on, and in all respects completed the performance of the said contract made between Sloo and the United States, and fulfilled all its obligations, so that the same was received and accepted by the officers and agents of the United States as in full satisfaction and performance thereof, and the said contract and all advances made or fines paid under it has been fully settled between the parties; and for such performances and services under said original contract these trustees acknowledge themselves to have been fully paid.

V. Your petitioners further state, that on or about the month of April, 1854, the said George Law resigned his position as trustee, and James Van Nostrand was elected to fill his place. In May, 1856, the said Van Nostrand resigned, and Horace F. Clark was elected to fill the vacancy. In the month of April, 1855, the said Bowes R. McIlvaine resigned his position as trustee, and Elwood Fisher chosen to fill his place. In the month of September, 1859, the said Fisher resigned, and Edward N. Dickerson, of New York, chosen to fill his place. On or about the day of , 187 , the said Horace F. Clark departed this life, and no person has been appointed or elected to fill the vacancy.

45 Your petitioners pray that this suit may be continued in the names of the surviving trustees.

VI. Your petitioners further allege, that during this time gold was discovered in California, which induced an immense tide of emigration to that country from the Atlantic and Western States, opened up new markets, created a new field of commerce, and consequently demanded increased mail facilities. The great demand and need for merchandise and goods of all kinds, the impetuous haste with which they were demanded, the increased amount of gold mined and shipped east, the loss of interest upon it while it remained idle until letters of advice should arrive, the rapid fluctuations in the markets of the Pacific—all these circumstances required a large increase in the means of communication and transit, both as to amount and rapidity.

The principal line of water communication between New York and San Francisco was via the isthmus of Panama, with reshipments at Chagres and Panama. The only regular line of mail and passenger ships from New York to San Francisco was, on the Atlantic side, that provided by the aforesaid contract made between the United States and the said Sloo, which would require reshipments at Havana; while upon the Pacific side it consisted only of sailing-vessels, making trips once a month each way.

While affairs were in this state, and the necessities for increased facilities of communication became more and more apparent, new lines were formed, new companies organized, and new and additional ships were put upon either ocean to run between these ports. In order to supply this increased demand for transportation and communication with regularity and dispatch, to the satisfaction of the public and with profit to the ship-owners, it became apparent that it should be reduced to a system, that there should be harmony of action among the owners of different lines, and that close connections should be made at
46 the isthmus between the arrival and departure of the different steamers on both sides. To this end an agreement was made, dated January 21, 1851, which, by reason of the number of parties and the magnitude of their interests involved, has been called the Quintuple Treaty.

It provided for a harmonious action—a concerted and continuous line between New York and San Francisco, via the isthmus of Panama, and secured co-operative action among all the ship-owners connected therewith. It provided largely increased facilities of communication and transportation by bringing in and adding to the respective lines a number of new ships on both oceans.

A copy of this quintuple treaty is hereto attached, made part of this petition, and marked "Exhibit E." Among other of its provisions may be found the following, which are pertinent to this case:

It was agreed that the parties of the first and second parts (the Pacific Mail S. S. Co.) should sell to the parties of the fourth part (the U. S. M. S. S. Co.) certain new ships which were intended to be run and used on the route upon the Atlantic Ocean to afford increased facilities for communication and transportation between New York and Chagres. The names of these steamships were respectively the Empire City, the Crescent City, the Cherokee, the Philadelphia, the Illinois, the George Law, and the Carribean. The name of the Carribean was afterwards changed to that of the El Dorado. These steamships were not included in the original Sloo contract, nor had they theretofore been included or covered by the deed of trust. It was agreed that freights and passengers might be sent between New York and San Francisco over this as a through line, and that either party on either ocean might issue through tickets and through bills of lading, which should be good on both lines and both

oceans. It also provided for a division of the money received on all through freights at certain specified rates, to wit, 60 per cent.
47 thereof to the Pacific Mail Steamship Company for carrying on the Pacific Ocean, and 34 per cent. to the trustees for carrying on the Atlantic Ocean.

It was also agreed between the parties of the first, second, fourth, fifth, and sixth parts (the party of the sixth part, Sloo, concurring therein as one of the conditions to his assent to said indenture or treaty) that all the steamships therein provided and agreed to be transferred to the party of the fourth part (the U. S. M. S. S. Co.) should be assigned, transferred, and set over to the trustees, and should be, by the said trustees, held and employed upon the like trusts, and with the same effect as if they had been built, constructed, completed, and finished in pursuance of the deed of trust of August 17, 1847, and the number of ships contemplated in that agreement was thereby agreed to be enlarged accordingly. And the said ships were to be employed in carrying the United States mail, with the concurrence of the proper authorities, or otherwise, as the trustees might deem most advantageous.

VII. Your petitioners allege that said steamships Empire City, Crescent City, Cherokee, Philadelphia, Illinois, George Law, and El Dorado were transferred to them, and by them registered in their names and capacities as trustees, and that they were run and employed by them in carrying the United States mail, together with freight and passengers, and that their earnings while running and their proceeds when sold came into their hands as trustees, were placed in and formed part of the trust-fund, and were by them distributed in accordance with the provisions of the deed of trust, in the same manner as before described in reference to the ships built under the contract; and in this respect no difference was made between the ships built under the contract and those brought in by virtue of this indenture or treaty of January 21, 1851.

They further allege that said steamships were prepared and
48 fitted for service with all due dispatch; that they were placed upon the line and began to run some time in the summer of 1851.

VIII. The mail-route prescribed in the contract between the United States and said Sloo required stoppages to be made at Charleston, Savannah, and Havana, and from thence to New Orleans, with a branch steamer from Havana to Chagres, which required a reshipment at Havana; the return trips to be made in the same manner.

As to the mails to be carried between New York and Chagres, the contract route required a detour from a direct line of several hundred miles, which, together with the required stoppages, produced a delay in each trip, each way, of two or three days greater than if the steamships had run direct between the two ports.

When the additional ships purchased under the quintuple treaty as aforesaid came into the hands of the trustees, in accordance with the provisions of that treaty, they (the trustees) proceeded to organize a fast line of extra ships, which should run direct between New York and Chagres, without stopping at Charleston or Savannah or making the detour to and reshipment at Havana. On this line the two or three days aforesaid, each way, were saved in the running time between New York and Chagres.

When these additional ships were ready for service, the trustees proceeded to carry out this proposed arrangement and to fully establish and run this fast line. In so doing they used some of the ships built under the Sloo contract, and which had been brought into the trust

under the deed of trust. They also used some of the additional ships brought into the trust under the provisions of the quintuple treaty, and in this respect, at the beginning, as well as all through the running of this fast line, they made no distinction between these two kinds of ships, but used the one or the other on either route, indiscriminately, as they were best qualified and adapted. In the establishment
49 of this fast line, they used of the contract ships the Ohio and Georgia, and of the additional ships brought into the trust under the quintuple treaty they used the Illinois, Crescent City, and afterwards the George Law, the North Star, and the Empire City, and others.

The service on the contract route was continued by the contract ship Falcon and the additional ships Cherokee, Philadelphia, and El Dorado, but frequent changes were made among the different ships on the different lines. As before stated, no distinction or discrimination was made between them.

As soon as this fast line was put in operation the merchants and business men of New York City and of San Francisco complained to the Post-Office Department that it had made no provision for carrying the United States mail by it, and that if such provision were made there would be a gain of two or three days' time in the transmission of the mails between New York and Chagres. Thereupon the Post-Office Department made application to the trustees to carry the United States mails on their extra ships, and by this fast or direct line between New York and Chagres.

After correspondence between the Post-Office Department on the one hand and the trustees on the other, it was finally agreed between them as follows: That the Post-Office Department employed the trustees to do and perform this service, and authorized and directed them to carry the United States mails, by this fast line and in those extra steamers, between New York and Chagres, twice a month, each way; that said service was extra and additional to that required under the contract made between the United States and said Sloo; that for such service the trustees were entitled to compensation, but, the parties being unable to agree as to the amount of compensation, it was further agreed between them that the service be performed, but that the question of compensation should be submitted to Congress, without requiring a prior stipulation to pay on the part of the Post-Office Department.

50 This agreement with and the order to the trustees to carry the mails was renewed by the Post-Office Department several times thereafter.

Under this agreement the said trustees received the mails on board of these extra and additional steamers, which they were running as a fast line as aforesaid, and carried and transported them between New York and Chagres, from August 13, 1851, to October, 1859, a space of eight years and months, making 194 trips from New York to Chagres and 188 trips from Chagres to New York.

The necessity for this agreement, and the benefit sought to be obtained by the Post-Office Department in making it, arose from the fact, as aforesaid, that these extra steamers were a fast line, and run direct between New York and Chagres, and did not go by way of nor make any stop at Charleston, Savannah, or Havana, and thus were able to make the trip in two or three days' less time, and to save two or three days each way in the transmission of the mail.

IX. Afterwards, on the 17th of May, 1852, the proposal was made by Wm. H. Aspinwall, then president of the Pacific Mail Steamship Com-

pany, first on his own motion, and afterwards upon the suggestion of the Post-Office Department; and, with the concurrence of the trustees, the proposition was renewed to carry the mails between New Orleans and Chagres by the establishment of a fast line, as had before been done between New York and Chagres, and which should run direct, without stopping at Havana. After correspondence upon this subject, it was finally agreed between the Post-Office Department and the trustees that the mails should be carried upon the direct line between New Orleans and Chagres, discontinuing the line from Havana to Chagres, upon the basis of the former agreement made for carrying the mails on the fast steamers running direct between New York and Chagres, with the
51 additional provision that if either party desired to discontinue this fast line running direct between New Orleans and Chagres, and resume the service between Havana and Chagres, as theretofore existing under the original contract made between the United States and Sloo, they should be at liberty so to do, upon giving one month's notice of their intention. Under this agreement the said trustees carried the mails on this fast line for two years and two months, between July, in 1854, and September 20, 1856, on their ships running direct between New Orleans and Chagres, making sixty trips from New Orleans to Chagres and fifty-nine trips from Chagres to New Orleans.

X. During all this time the mails were regularly received, transported, and delivered over and upon the route between New York and New Orleans, via Charleston, Savannah, and Havana, and between Havana and Chagres, as provided in and required by the original contract made between the United States and said Sloo, save and except that during the running of the fast line between New Orleans and Chagres, direct, for the sixty outward and fifty-nine inward trips aforesaid, the regular steamers between Havana and Chagres were discontinued by the consent of both parties.

XI. Your petitioners allege and aver that the mail service hereinbefore described, done by the fast line by steamers running direct between New York and Chagres, and between New Orleans and Chagres, was extra and additional mail service over and beyond that required by the original contract; that said extra and direct service was not included in or agreed to be performed under the original contract, but was additional thereto.

After a time, to wit, about July, 1852, the Central American terminus was changed from Chagres to Aspinwall.

XII. Your petitioners further allege, that, by reason of the premises aforesaid, the United States became indebted to them and prom-
52 ised to pay them for such extra and additional mail service, so done and performed as aforesaid, whatever the same might be reasonably worth, as the same should or might be fixed and determined by the Congress of the United States, to which tribunal the question of the amount of compensation had been agreed to be submitted.

XIII. Your petitioners further allege, that they presented this memorial, setting forth their claim and submitting the question of compensation and the amount to the 34th Congress, while the said extra and additional service was still being performed; that the same was referred to the Committee of Post-Offices and Post-Roads in the Senate, which reported to said Congress in favor of the allowance of said claim, but the Congress adjourned without action thereupon. Their memorial was again presented to every subsequent and succeeding Congress to and including the 38th, a space of ten years, with the like favorable action by the committees of each, and in each a final adjournment without

action thereupon. They aver that they used due diligence in the prosecution of their said claim, and that there has never been an unfavorable report made, or any adverse action had by Congress in respect of their said claim.

XIV. They further aver that, on the 28th day of February, A. D. 1866, they presented and filed in this court their original petition; that by reason of the clause and provision in their said agreement made with the Post-Office Department, viz, that the question of the amount of compensation should be submitted to and determined by Congress, they again presented their memorial to Congress, representing that they had commenced their suit in this court, and praying that if Congress would not itself settle and determine the question of the amount of compensation, as agreed upon between your petitioner and the Post-Office Department, that it should fix and determine the basis upon which it should be settled, and then refer the claim to this court, with authority to it to adjudicate and determine the same.

53 Accordingly the Congress passed an act for their relief, which was approved and became a law July 14, 1870, which is as follows:

[Private, No. 108.]

An act for the relief of the trustees of Albert G. Sloo.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the claim of the trustees of Albert G. Sloo, for compensation for services in carrying the United States mails by steamers, direct between New York and Chagres, and New Orleans and Chagres, in addition to the regular service required under the contract made between the said Albert G. Sloo and the United States, be, and the same is hereby, referred to the Court of Claims, and the said court is hereby directed to examine the same, and determine and adjudge whether any, and, if any, what, amount is due said trustees for said extra service; provided, that the amount to be awarded by said court shall be upon the basis of the value of carrying other first-class freight of like quantity with the mails actually carried between the same ports at the same time.

Approved July 14, 1870.

They aver that the said act of Congress is in full force and effect, and pray that the same may be considered in this cause.

XV. They further aver that the compensation provided for in the original contract made between the United States and said Sloo was entirely inadequate and insufficient; that the whole matter was an experiment. On the part of the United States it was an experiment to secure in the hands of private parties, and without expense to the United States, a number of ships which in case of need could be easily transformed into war-vessels. On the part of the contractor it was an experiment in the establishment of a new line of steamships in an untried field of commerce, in which there had to be an investment of a vast amount of money, one of great risk, and in which the profits or returns depended upon the double uncertainties of the ocean and the future.

54 The trial and determination of the experiment proved it to be a very costly one to the private parties who were interested as cestuis que trust; for after selling all the vessels remaining at the expiration of the contract, upon a statement made by the trustees at the close of their trust, it was found that the receipts did not cover the ex-

penditures, and that there was a clear loss of about $300,000; and so it remains at the present time.

If the question of compensation should be submitted to persons acquainted with and who have had experience in respect of the business of carrying mails and running ocean mails, it would be found that a fair and reasonable compensation for such service, considering the risks, would be, between New York and Chagres, about $5,000 per trip each way, or $10,000 per round trip, and between New Orleans and Chagres, from $3,750 to $4,000 per trip each way, or $8,000 per round trip.

While the value of the services and the losses accruing are stated as above, yet by reason of the length of time which has elapsed, with agreement to submit to the arbitrament of Congress the question of the amount of compensation to be awarded, these plaintiffs aver their entire willingness to accept and abide by the decision of Congress expressed in the act of July 14, 1870, as the basis upon which the compensation shall be computed and determined.

They therefore aver that the United States mails actually carried by them as aforesaid, on their ships as aforesaid, between the ports as aforesaid, which were "in addition to the regular service required under the contract made between said Albert G. Sloo and the United States," calculating the same by the amount of cubic feet displaced, as was and is the custom among shippers with respect to articles of the same specific gravity as mails, amounted to as follows, to wit:

| | | |
|---|---|---|
| From New York to Chagres | 30 | tons per trip. |
| Chagres to New York | 15 | " |
| New Orleans to Chagres | 7 | " |
| Chagres to New Orleans | 3 | " |

55 Your petitioners further aver, that at that time all first-class freights were carried between New York, New Orleans, and San Francisco by express companies, and that in the carrying between these ports there was no appreciable difference between express freight and first-class freight; that first-class freight of like quantity with the mails, actually carried between the same ports at the same time, was of the value of ten cents per pound.

They aver that this is the basis upon which the amount to be awarded by this court, under the act of July 14, 1870, should be adjudged and determined, and that they are entitled to recover for the carrying of the mails for the number of trips hereinbefore stated, of the weight per trip as hereinbefore stated, and of the value per pound as hereinbefore stated.

XVI. They further state that the said A. G. Sloo, George Law, Marshall O. Roberts, James Van Nostrand, Bowes R. McIlvaine, Horace F. Clark, Elwood Fisher, and Edward N. Dickerson are, and the said A. G. Sloo, Bowes R. McIlvaine, Horace F. Clark, and Elwood Fisher, now deceased, were, each and every of them, citizens of these United States; that they have at all times borne true faith and allegiance to the Government of the United States, and that they, nor any of them, have never voluntarily aided, abetted, or given encouragement to any rebellion against the said Government of the United States.

They pray judgment for the sum of one million and thirty-one thousand dollars.

MARSHALL O. ROBERTS,
*Trustee and Agent.*
THOMAS WILSON,
*Attorney for Plaintiffs.*

56 STATE OF NEW YORK,
*City and County of New York, ss:*

Marshall O. Roberts, one of the claimants herein, being duly sworn, says that no assignment or transfer of the claim set forth in the foregoing petition, or any part thereof, has been made, except as in said petition stated; that said claimants are justly entitled to the amount claimed from the United States, after allowing all just credits and offsets; and that he believes the facts stated in said petition are true.

(Signed) MARSHALL O. ROBERTS,
*Trustee and Agent.*

Subscribed and sworn to before me this fifteenth day of October, 1874.
J. R. CUMING,
*Notary Public.*

Residence of plaintiffs, New York City.
Residence of attorney, Washington D. C.

57 EXHIBITS.

*The Sloo contract.*

EXHIBIT A.

This agreement, made at the city of Washington, in the District of Columbia, this twentieth day of April, anno Domini eighteen hundred and forty-seven, between the United States of America, by the Secretary of the Navy thereof, and Albert G. Sloo, of the city of Cincinnati, in the State of Ohio, witnesseth: That whereas, by the 4th section of an act of Congress approved March 3, 1847, entitled "An act providing for the building and equipment of four naval steamships," it is made the duty of the said Secretary of the Navy, upon certain terms and conditions in said act enumerated, to contract, on the part of the Government of the United States, with the said A. G. Sloo for the transportation of the United States mail from New York to New Orleans twice a month, and back, touching at Charleston, (if practicable,) Savannah, and Havana, and from Havana to Chagres, and back, twice a month: Now, therefore, the said A. G. Sloo does hereby agree with the United States aforesaid, and firmly binds himself, to establish a line of steamships, to consist of at least five vessels, for the transportation of the United States mail from New York to New Orleans, twice a month, and back, touching at Charleston, (if practicable,) Savannah, and Havana, and from Havana to Chagres, and back, twice a month, according to the terms and meaning of said act of Congress, the said steamships to be of not less than fifteen hundred tons burden, and propelled by engines of not less than one thousand horse-power each, to be constructed under the superintendence and direction of a naval constructor in the employ of the Navy Department, and to be so constructed as to render them convertible, at the least possible expense, into war-steamers of the first class; provided, however, that the Secretary of the Navy may, at his discretion, permit one of said steamships to be constructed of not less than six hundred tons burden, and engines in proportion.

58 And it is agreed by and between the parties aforesaid, that two of the said steamships shall be completed and ready for service on or before the first day of October, A. D. 1848, shall be of the burden

(1,500 tons) above described, and shall be propelled by engines of direct action, similar to the engine of the late United States steamer Missouri; and each of said ships shall be constructed of approved materials and fastenings, upon the dimensions of the late steamship Missouri, as they are known and on record in the Navy Department of the United States, reserving to said contractor the right to add a saloon-deck in said steamers, to add to their length not exceeding thirty feet, and breadth of beam not exceeding five feet, as may be necessary to give them the draught of water required by law for the service intended, and reserving to the contractor also the right to add two feet to the length of cylinder above provided for, so as to make the same seventy inches in diameter and twelve feet stroke; but in making any or all of the alterations here permitted from the plan of the Missouri aforesaid, the said contractor is not to disregard the general proportions of the steamships so to be constructed, but is to have reference to them, and to make the corresponding changes, in order to preserve them, which may be required for the purpose by his said alterations; and said ships shall be sheathed with copper of approved quality; shall have ample and convenient capacity for the accommodation of men and stores of every description; shall be well and thoroughly fitted with not less than three masts and the necessary spars, ropes, rigging, and canvas; shall be furnished and fitted with good and sufficient ground-tackle, chain and hempen cables, anchors and hawsers, with iron side-wheels, with good and sufficient boilers, and coal-bins for a supply of twenty days, and with all the fixtures and findings properly belonging to steamships of the dimensions and character above recited. The said boilers and machinery are to be of the best quality, and to be so placed below the water-line as to be, as far as practicable, beyond the reach of cannon-shot; and the said steamers, in strength, capacity, rigging, spars, engines, boilers, and in all other respects whatsoever, are to be similar to the United States ship Missouri, as far as the alterations above permitted and a reasonable regard to the nature of the service contemplated will allow.

59 And it is further agreed by and between the parties aforesaid, that should the Secretary of the Navy determine to employ a steamer of not less than six hundred tons burden for the service between Havana and Chagres, in lieu of one of said five steamers of fifteen hundred tons, as provided in the fourth section of the act of Congress hereinbefore referred to, then the said A. G. Sloo will construct said steamships of the same material, build, and finish, with size, engine, and dimensions in proportion, (having regard to tonnage to the above-described ships,) and fully capable, in all respects, of performing the service and answering all the conditions required by said law.

And it is further agreed by and between the parties aforesaid, that the said contractor, A. G. Sloo, shall complete and have in readiness for service the two remaining steamships provided in the act aforesaid on or before the first day of October, A. D. 1849, to be constructed and fitted in every respect of the burden, capacity, power, and description of the two steamships first hereinabove described, with such improvements in model, engines, boilers, and finish as may be approved by the parties to this contract. And said line of steamships shall be kept up by alterations, repairs, or additions (of approved character) fully equal to the exigencies of the service and the faithful accomplishment of the purposes recited in said act, shall perform the services required by said act according to its true intent and meaning, and shall be in full and entire operation on or before the first day of October, A. D. 1849.

And it is further agreed by and between said parties, that each and

all of said steamships shall be commanded by an officer of the Navy of the United States, not below the grade of lieutenant, to be selected by the said contractor, A. G. Sloo, with the approval and consent of the Secretary of the Navy, and to be accommodated on board thereof in a manner becoming his rank and station, without charges to the Government of the United States. And said A. G. Sloo further agrees to receive on board each of said steamships, and accommodate in a manner suitable to their rank, without charge to the Government of the United States, four passed midshipmen of the United States Navy, to serve as watch-officers, and also to receive on board each ship, and suitably accommodate, without charge to the United States Government, an agent, to be appointed by the Postmaster-General, who shall have charge
60 of the mails to be transported therein; safe and convenient apartments on board said ships being provided for said mails and agent by the said A. G. Sloo, contractor.

And the said United States of America, by the said Secretary of the Navy, in consideration of the premises, do hereby promise and agree to pay to the said A. G. Sloo, contractor, as a compensation for the service hereinbefore stipulated, the just and full sum of two hundred and ninety thousand dollars per annum, payable in quarterly payments, upon the full performance by the said Sloo of the service aforesaid according to the meaning of said act of Congress and of this contract; and inasmuch as the said steamships will be completed at different periods, respectively, within the time above limited, it is hereby understood and agreed by the parties aforesaid that each of said ships shall commence the mail service required as soon as she shall be in all respects ready therefor, according to the terms of this contract, and that a proportionate part of said compensation stipulated for the whole service aforesaid shall be paid to said A. G. Sloo for the partial service which may thus be rendered by the steamer or steamers which may, as aforesaid, be first completed; but no compensation shall, in any case, be paid for any period prior to the time when such steamships shall commence the actual performance of the service required by said act of Congress.

And it is further agreed by and between the parties aforesaid, that, on tender of proper compensation by the said Government of the United States, not exceeding a due proportion of the pay herein stipulated, the said A. G. Sloo, contractor, shall convey any mail or mails of the said United States which he may be required to convey on any steamship which he, the said Sloo, may own, run, or control on the routes aforesaid, beyond the number of trips herein specified.

And it is further agreed by and between said parties, that this contract shall continue in force for the term of ten years, to commence from the actual commencement of the service above specified; and the said Secretary of the United States Navy, for the time being, shall, at all times, exercise control over said steamships, and shall, at any time, have the right to take them for the exclusive use and service of the United States, and to direct such changes in their machinery and internal arrangements as the said Secretary may require, the cost of such changes to be ascertained by the bills actually paid therefor, and the
61 proper compensation of the value of the ships, when so taken as aforesaid, to be ascertained by appraisers to be mutually chosen by the parties aforesaid.

In testimony of all which agreements and stipulations the parties above named have hereunto signed their names and affixed their seals

this twentieth day of April, A. D. one thousand eight hundred and forty-seven.

A. G. SLOO. [L. S.]
J. Y. MASON, [L. S.]
*Secretary of the Navy.*

Signed, sealed, and delivered in the presence of—

As to the signature of Albert G. Sloo—(the words "as principal and as his sureties," and the words "jointly and severally," first erased by black lines, and the word "themselves" altered to "himself," before signing)—

GEO. L. STORER.
J. Y. M.
JOHN APPLETON.

*Assignment to the trustees.*

EXHIBIT B.

Know all men by these presents that I, Albert G. Sloo, of the city of Cincinnati, in the State of Ohio, in consideration of one dollar to me in hand paid by George Law, Marshall O. Roberts, and Bowes R. McIlvaine, of the city of New York, the receipt whereof is hereby acknowledged, and for divers other causes and considerations me thereunto moving, have assigned, transferred, and set over, and by these presents do assign, transfer, and set over, unto them, the said George Law, Marshall O. Roberts, and Bowes R. McIlvaine, a certain contract bearing date the twentieth of April, in the year one thousand eight hundred and forty-seven, and made and executed by and between the United States of America, by the Secretary of the Navy thereof, of the one part, and me, the said Albert G. Sloo, of the other part, for the establishment of a line of steamships for the transportation of the United States mail from New York to New Orleans, twice a month and back, and which contract is hereunto annexed. To have and to hold the said contract, and all my right, title, and interest therein, and in and to the moneys to be had and received by virtue thereof, and all the privileges, emoluments, benefits, and advantages thereunto belonging, subject, however, to the duties, services, and obligations therein specified, to be performed by me to the Government of the United States, unto them, the said George Law, Marshall O. Roberts, and Bowes R. McIlvaine, and the survivors and survivor of them, their successors and assigns, forever, upon the trusts, however, and for the uses and purposes expressed and declared in a certain deed or indenture bearing date the seventeenth day of August, one thousand eight hundred and forty-seven, made and executed by and between me, the said Albert G. Sloo, of the first part, and George Law, Marshall O. Roberts, and others, of the second part, and the said George Law, Marshall O. Roberts, and Bowes R. McIlvaine, of the third part, and which said indenture, so far forth as it relates to and declares the said trusts, is to be taken and deemed as part and parcel of these presents.

62

And I, the said Albert G. Sloo, do hereby covenant and agree, to and with the said George Law, Marshall O. Roberts, and Bowes R. McIlvaine, that the said contract is now free and clear of and from all other and former grants, assignments, transfers, mortgages, and encumbrances whatsoever, and that I have good right and lawful authority to

transfer and assign the same in manner aforesaid, subject to the approval of the Secretary of the Navy.

In witness whereof I have hereunto set my hand and seal, this third day of September, in the year of our Lord one thousand eight hundred and forty-seven.

(Signed) A. G. SLOO. [L. S.]

Sealed and delivered in presence of—
(Signed) ROBERT GETTY.
A. IRWIN, Jr.

We, the undersigned, sureties for the fulfilment of the stipulations of the contract mentioned in the within assignment, executed by and between the United States of America, by the Secretary of the Navy thereof, on the one part, and Albert G. Sloo, of the other part, bearing date the twentieth day of April, one thousand eight hundred and forty-seven, do hereby covenant and agree to the foregoing assignment thereof by the said Albert G. Sloo, to the within-named George Law, Marshall O. Roberts, and Bowes R. McIlvaine, and that the said assign-
63 ment shall in no manner affect our responsibility or liability as such sureties, in case of any neglect, default, or breach in the performance of the stipulations of the said contract, or any of them, but that our liabilities as such sureties shall continue in the same manner and with the like effect as if the said assignment had not been made.

In witness whereof we have hereunto set our hands and seals this third day of September, in the year of our Lord one thousand eight hundred and forty-seven.

(Signed) ROBERT C. WETMORE. [L. S.]
" MARSHALL O. ROBERTS. [L. S.]
" GEORGE LAW. [L. S.]
" EDWIN CROSWELL. [L. S.]

Sealed and delivered in the presence of—
(The word "consent" being written over an erasure.)
JAMES ANDERSON, to the signatures of Robert C. Wetmore, Marshall O. Roberts, and George Law.
J. I. JOHNSON, to the signature of Edwin Croswell.

*Deed of trust.*

EXHIBIT C.

This indenture, made the seventeenth day of August, in the year of our Lord one thousand eight hundred and forty-seven, between Albert G. Sloo, of Cincinnati, in the State of Ohio, of the first part, Wetmore, Prosper M. Wetmore, George Law, and Marshall O. Roberts, of the city of New York, and Edwin Croswell, of the city of Albany, of the second part, and the said George Law, Marshall O. Roberts, and Bowes R. McIlvaine, of the city of New York, of the third part:

Whereas the Secretary of the Navy of the United States has made a contract on the part of the Government of the United States with the said party of the first part for the transportation of the United States mail in steamships from New York to New Orleans and other places,
and back to New York, pursuant to an act of Congress entitled,
64 "An act providing for the building and equipping of four naval

steamships," approved March 3, 1847, as by the said contract, bearing date the 20th day of April, 1847, a copy whereof is hereunto annexed, may more fully appear;

And whereas the said party of the first part hath applied to the said parties of the second part for aid to enable him to fulfill the terms and conditions of said contract, and the said parties of the second part have agreed to aid him, the said party of the first part, in the manner and on the terms and conditions hereinafter mentioned, upon his executing an assignment of the said contract to the said parties of the third part upon the trusts and for the uses and purposes hereinafter expressed and declared;

And whereas the said party of the first part has accordingly, by an instrument bearing even date herewith and annexed to the said contract, assigned and transferred the said contract to the said parties of the third part upon trust as aforesaid:

Now, therefore, this indenture witnesseth: That the said parties of the second part, in consideration of the said assignment in the said instrument and herein contained, and of the several covenants and agreements hereinafter contained, on the part of the said party of the first part, do hereby covenant, promise, and agree to and with the said party of the first part that they will build, construct, finish, and completely equip the steamships which in and by the contract aforesaid are contracted to be built by the said party of the first part in such manner and at such times as are or may be required by the Navy Department of the United States, and provide for and pay all the moneys necessary therefor, such steamships and their machinery to be built, constructed, equipped, and repaired under the superintendence and direction and control of George Law, one of the parties of the second part, and that they will in all things well and truly fulfill and perform all the duties and services which in the said contract are agreed to be done and performed by the said party of the first part.

And this indenture further witnesseth, that the said party of the first part, in consideration of the foregoing covenants and agreements by the said parties of the second part, and of one dollar to him in hand paid by the said party of the third part, the receipt whereof is hereby acknowledged, hath assigned, transferred, and set over, and by these
65 presents doth assign, transfer, and set over unto the said parties of the third part and the survivors and survivor of them, their successors and assigns, the said contract so made and executed by the Secretary of the Navy on behalf of the United States with the said party of the first part, as hereinbefore mentioned, and all his right, title, and interest therein, and in and to the moneys to be had and received by virtue thereof, and all the privileges, emoluments, benefits, and advantages thereunto belonging, subject, however, to the duties, services, and obligations therein specified, to be performed by the said party of the first part, to have and to hold all and singular the said premises unto the said parties of the third part, and the survivors and survivor of their successors and assigns; upon the trusts, nevertheless, and for the uses and purposes and with the several powers and duties hereinafter expressed and declared.

And it is hereby mutually declared and agreed by and between all the parties to these presents that these presents and the assignment of the said contract hereinbefore mentioned, to have been executed by the said party of the first to the said parties of the third part, bearing even date herewith and annexed to the said original contract are and is upon the following trusts and for the following uses and purposes, that is to say: Upon the

trust that the said trustees shall cause the said steamships, as they shall from time to time be built, to be registered in their names or in the names of the survivors or survivor of them or their successors; and that they have the sole management and direction of the said ships, and of each of them, and of their employment, subject, however, to the provisions of the said contract with the Secretary of the Navy, that they appoint and pay all such officers, agents, or other persons as they may deem necessary or proper, either for the sailing or navigating of the said vessels, or for the management of the business thereof at the various ports or places at which they may trade or stop, on such terms, for such times, and with such powers and duties as to them may seem fit; except, however, that the said party of the first part shall have the privilege of nominating the commanders of the said ships, and by and with the consent of the said trustees of appointing the same; that they make all the necessary contracts and agreements for the employment of the said vessels, and exercise and perform all such other powers
66 and duties in the premises as may be necessary or proper, either for performing the duties and services required by the Secretary of the Navy or for the profit and advantage of the parties interested; and upon the further trust that they collect and receive all the freights and earnings of the said vessels, and all sums which shall be paid by the Government of the United States for the transportation of the mail or for any other service which may be required by Government, and all other sums which may become due or payable on account thereof, and make all the disbursements of every kind incurred in the employment of the said vessels; and upon the further trust that the said trustees render to the said parties of the first and second part respectively, quarter yearly, an account in writing of all their receipts and expenditures in the discharge of their trust, the first of such accounts to be rendered at the expiration of three months from the commencement of service by said steamships or any of them, and that they apply the net earnings which shall remain at the expiration of every quarter after paying all the disbursements of the vessels, and all the costs, charges, and expenditures of every kind to which the said trustees may in any manner be subjected, or which are hereinafter declared to be a charge upon the joint funds, in the first place, to the payment of the sum of twelve thousand five hundred dollars quarterly, one-half thereof to the said party of the first part, and the other half to the said parties of the second part, and the residue of such net earnings to the repayment of all advances made by the said parties of the second part, rateably in proportion to the amounts advanced by them respectively, in pursuance to the covenants in this indenture contained, together with legal interests thereon, and a commission of ten per cent. on all sums advanced for building, equipping, and furnishing said vessels; and lastly, upon trust that when all the moneys advanced by the said parties of the second part, pursuant to this agreement, with interest and commissions as hereinabove provided, and all expenses and responsibilities of every kind incurred by them or by the said trustees shall be lawfully satisfied and paid, that the said trustees then divide the net earnings of the said vessels, including the sums to be received from the Government of the United States quarterly into two equal parts, whereof one part shall be paid to the said party of the first part or his legal representatives, and the other part to the said parties of the second
67 part or their legal representatives, and that the said steamships or vessels shall be held by the said trustees in trust for the said party of the first part and his representatives, and the said parties of the second part and their representatives in like manner, in equal shares; and it is

also further mutually agreed by and between all the parties hereto that the said Marshall O. Roberts and Edwin Crosswell shall be joint agents in the city of New York for the transaction of the business of the said ships in the said city, under the direction and control of said trustees; that the said Marshall O. Roberts shall receive as compensation for his services as agent the sum of ten thousand dollars per annum, and the said Edwin Croswell shall receive as compensation for his services as agent the sum of five thousand dollars per annum, such payments to be made quarterly, and to be paid out of the joint funds of the concern, and to commence with the commencement of service by any one of the said vessels.

It is also further mutually agreed that the said George Law shall receive as a compensation for his services in constructing, equipping, and repairing said steamships and their machinery, the sum of five thousand dollars per annum, to commence as soon as the construction of said vessels shall be begun, and to be paid quarterly out of the joint funds of the concern.

It is also agreed that the said Bowes R. McIlvaine shall receive as a compensation for his services as trustee the sum of five thousand dollars per annum; such sum to be paid quarterly out of the shares of the profits of the said party of the first part, to commence with the commencement of service by any one of said vessels.

It is also further agreed by and between the parties of the first and second parts that Arnold Harris shall be agent of the said vessels at New Orleans, subject to the approval and control of the trustees.

And it is also further mutually covenanted and agreed by and between all the parties hereto that in case the said George Law and Marshall O. Roberts, or either of them, shall die or shall resign, or become incapable of performing the duties of the office of trustee, the said parties of the second part and the survivors and the survivor of them shall appoint some suitable person or persons to fill the vacancy or vacancies thus occasioned; and thereupon the said contracts and the said
68 ships and the trust hereby created shall be transferred and assigned in such manner as to substitute the said new trustee or trustees in the place of the trustee whose office has become vacant as aforesaid, with the like effect as if he had been originally named and appointed by these presents; and in case the said Bowes R. McIlvaine shall die or become incapable of acting or shall resign, then the said party of the first part may appoint some fit person to be substituted in the place of the said Bowes R. McIlvaine with the like effect as if he had been originally named in these presents.

It is also agreed that in case the said Edwin Croswell shall die or become incapable of acting, or shall resign, then the said party of the first part may appoint some other person as joint agent in the city of New York, in the place of the said Edwin Croswell, such appointment to be subject to the approval of the said trustees; and that in case of the death, resignation, or inability to act of the said Marshall O. Roberts as agent, or the said George Law as naval constructor, then the said parties of the second part shall appoint their successors, as the case may be.

It is also further agreed that at the expiration of the contract made with the Secretary of the Navy as before mentioned, the said trustees shall sell and dispose of the said ships at public sale, giving at least sixty days' notice thereof in two of the public newspapers printed in the city of New York, and divide the net proceeds thereof, after defraying all the expenses of the sale and re-imbursing themselves all sums which may be due to them or for which they may be liable as trustees,

or which then may be due to the said parties of the second part, between the several parties hereto according to their several rights and interests therein as hereinabove expressed, that is to say, one-half part to the said parties of the first part, or his representatives, and the other half part to the said parties of second part, or their representatives.

And it is hereby further mutually agreed that the said trustees may consent to any modification of the said contract which the Secretary of the Navy may require, and which, in the opinion of the said trustees, may be advantageous to the parties of the first and second parts.

And it is also further agreed that the said parties of the second part may associate any other person or persons as parties in interest with them, who shall thereupon become entitled to all the benefits of
69 the said contract and of the trust hereby created, in the like manner as if they had been originally named as parties hereto.

And the said parties of the third part hereby accept the said trust and covenant, and agree severally, and not jointly, to and with the said parties of the first and second parts respectively, well and truly to perform and fulfill all the duties and services hereinabove imposed and required: Provided, however, and it is expressly understood and agreed, that the said trustees shall not be liable for any more money than they shall actually receive under and by virtue of these presents, nor for the failure or misconduct of any officer or agent employed by them in good faith, nor for the loss, miscarriages, or misapplication of any moneys received or transmitted by or to them, or any person or persons employed in the management of the business of the trust, nor for acts, defaults, and misconduct of each other, but each for his own acts, defaults, and misconduct only.

And it is hereby further mutually agreed that any modification, renewal, or continuance of the said contract at any time obtained from Congress, or the Naval Department, by either or any of the parties to these presents shall enure to the joint and common benefit of the parties hereto respectively, their representatives or assigns, in the proportion of their respective interests, as herein above set forth.

In witness whereof the said parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

A. G. SLOO.
GEORGE LAW.
MARSHALL O. ROBERTS.
EDWIN CROSWELL.
PROSPER M. WETMORE,
(By his attorney, ROBERT C. WETMORE.)
B. R. McILVAINE.

Sealed and delivered in the presence of—
JOHN L. MASON.

CITY AND COUNTY OF NEW YORK:

On this seventeenth day of August, in the year of our Lord one thousand eight hundred and forty-seven, before me, personally appeared John L. Mason, to me known, who, being by me duly sworn, did depose and say that he resides in the city of New York, that he is ac-
70 quainted with A. G. Sloo, George Law, Marshall O. Roberts, Edwin Croswell, Robert C. Wetmore, attorney of Prosper M. Wetmore, and B. R. McIlvaine, and knowing them to be the same persons described in and who executed the within indentures, that they exe-

cuted the same in his presence; that they acknowledged to him that they executed the same, and that he signed his name as a subscribing witness thereto.

BENJAMIN H. JARVIS,
*Commissioner of Deeds.*

*Assignment to the United States Steamship Company.*

EXHIBIT D.

This indenture, made and entered into the eighth day of July, one thousand eight hundred and fifty, by and between George Law, Marshall O. Roberts, Edwin Crosswell, and Prosper M. Wetmore, of the city of New York, of the first part, and the United States Mail Steamship Company, a corporation under and by virtue of an act of the legislature of the State of New York, and doing business in the said city of New York, of the second part, witnesseth as follows, to wit:

Whereas the said parties hereto of the first part, heretofore, on the seventeenth day of August, one thousand eight hundred and forty-seven, became parties of the second part to an indenture of that date, to which Albert G. Sloo, of Cincinnati, Ohio, was the party of the first part, and the said George Law, Marshall O. Roberts, and Bowes R. McIlvaine, were parties of the third part, a copy of which said indenture is hereto annexed, and is hereby made part of these presents, and referred to for a full specification of the particulars herein contained, in which said indenture the said parties hereto of the first part undertook and agreed to furnish, build, and equip and deliver to the said parties thereto of the third part as trustees, certain steamships, for the purposes therein particularly mentioned, and to do and perform other things therein mentioned.

And whereas in and by the same indenture, and also in and by
71 another instrument bearing date the third day of September, one thousand eight hundred and forty-seven, the said Albert G. Sloo assigned, transferred, and set over to the said above-named trustees a certain agreement bearing date the twentieth day of April, one thousand eight hundred and forty-seven, between the United States of America (by the Secretary of the Navy) and the said Albert G. Sloo—a copy of which agreement is also hereunto annexed—to be held by the said George Law, Marshall O. Roberts, and Bowes R. McIlvaine, as trustees, for the uses and purposes in the said indenture of the seventeenth day of August particularly mentioned.

And whereas, in and by a certain other indenture bearing date the seventh day of February, one thousand eight hundred and fifty, made by and between the said Albert G. Sloo, of the first part, and the said George Law, Marshall O. Roberts, Edwin Croswell, and Prosper M. Wetmore, of the second part, the aforesaid indenture of the seventeenth of August, 1847, and the rights, duties, and obligations of the parties thereto of the second part, under the same, were modified.

Under and by virtue of which said indentures of the seventeenth of August and seventh of February above mentioned, certain earnings and profits are directed to be divided and paid to the said parties hereto of the first part; and in pursuance of the aforesaid indentures and agreements, the said parties hereto of the first part have furnished and delivered to the aforesaid three trustees three steamships called, respectively, the "Ohio," the "Georgia," and the "Falcon," and the said ships are now running under the direction of the said trustees, and engaged in

the transportation of the United States mail under the said agreement with the United States, and in the transportation of passengers and freight:

Now, therefore, these presents witness: That the parties hereto of the first part, in consideration of the sum of one million one hundred and thirty-two thousand four hundred and forty dollars and forty-seven cents, paid to them severally in the following proportions, to wit:

| | | |
|---|---|---|
| To the said George Law, seven hundred and twenty-three thousand four hundred and seventy dollars and ninety-one cents | $723,470 | 91 |
| To the said Marshall O. Roberts, one hundred and ninety-two thousand five hundred and ninety dollars and thirty-one cents | $192,590 | 31 |
| To the said Prosper M. Wetmore, one hundred and eight thousand six hundred and nine dollars and thirty-six cents | 108,609 | 36 |
| And to the said Edwin Croswell, one hundred and seven thousand seven hundred and sixty-nine dollars and eighty-nine cents | 107,769 | 89 |
| | 1,132,440 | 47 |

The receipt whereof from the parties hereto of the second part they do hereby acknowledge, have bargained and sold, and by these presents do assign, transfer, and set over unto the parties hereto of the second part, and their successors, all and every their joint and several interests in the said three steamships, Ohio, Georgia, and Falcon, and in the aforesaid agreement between Albert G. Sloo and the United States, and in the before-mentioned indentures of the seventeenth of August and seventh of February; and in all the moneys, earnings, mail-pay, and profits which, according to the provisions of the last above-named two indentures, shall become payable to them, the said parties thereto of the second part, or either of them; but expressly excepting and reserving to themselves all and every the earnings, profits, and mail-pay earned by the said ships, and in any manner payable or hereafter to become payable to them jointly as aforesaid down to the seventh day of May now last past, on which day the interest hereby transferred to the parties hereto of the second part shall, for all purposes of accounting with the said trustees, be deemed to have accrued.

And further expressly reserving to the said George Law, Marshall O. Roberts, and Edwin Croswell all their several and respective salaries provided for and agreed to be paid to them severally by the said trustees according to the above-mentioned indentures, to continue in the same manner and to the same extent as if these presents had not been made, so long as they shall respectively be employed as superintendents or agents under the said agreements; and in like manner reserving to them their several rights and privileges, that is to say, to the said George Law to superintend the construction, building, and repairing, from time to time, under his own sole control, of all the steamships which have been or may be built or furnished to the said trustees, or
73 held by them under the aforesaid indentures, and to receive his salary therefor. And to the said Roberts and Croswell, to be agents of the said ships in New York, and to receive their respective salaries therefor, until by the concurrence of the said Albert G. Sloo and the said parties hereto of the second part, the employment of the said

Law, Roberts, and Croswell, or either of them, shall be dispensed with, and thereupon and thereafter the said respective salaries of the parties whose employment shall be discontinued shall belong and be paid to the parties hereto of the second part. It being the intent of these presents, that if the said parties hereto of the second part can procure the consent of the said Albert G. Sloo, they shall have the full and free right and privilege of appointing and employing, and paying such agents and superintendents as they may think proper, and shall in that event receive the money reserved to the said Law, Roberts, and Croswell as salaries by the aforesaid indentures.

And in like manner and upon the like condition, the parties *ties* hereto of the first part hereby transfer and assign to them, the said parties hereto of the second part, and their successors, all the rights and powers to appoint trustees to fill a vacancy or vacancies in the office of trustees under the said indenture of the seventeenth day of August, and in the office of agent in the city of New York, and in the office held by the said George Law, as naval constructor and superintendent, and all and every the other rights and powers which in and by either or both of the said indentures are reserved, given, or secured to the parties hereto of the first part jointly as parties to the said indentures of the second part.

And in like manner they authorize and direct the trustees aforesaid to account to and with the said parties of the second part and their successors (in the place and stead of them, the parties hereto of the first part jointly) quarter yearly as in and by the last above-mentioned indentures provided, and to pay to them all moneys, profits, mail-pay, earnings, and proceeds of the said ships which are earned from and after the said 7th day of May last past, and by such indentures are payable to the parties hereto of the first part, including as well the quarterly sum of six thousand two hundred and fifty dollars, as also the repayments (out of net earnings subsequent to the said 7th of May,) of advances, interest,
and commissions, and the final equal share or moiety of the mail-
74 pay, earnings, and profits, and of the ultimate proceeds of sale of the said ships, which, according to the provisions of the said indenture, would be and become payable to the parties hereto of the first part jointly as aforesaid. And also such salaries as aforesaid as may have ceased to be payable to either of the parties hereto of the first part under the stipulations herein contained.

And inasmuch as the title to a portion of the aforesaid steamship Falcon is now subject to a lien thereon, to secure the payment of certain moneys due and payable by the said George Law, in the month of November in this present year: Now, therefore, the said George Law, severally, on his own behalf, hereby covenants and agrees to and with the said parties hereto of the second part, that he will pay off and discharge the said lien, and will fully protect, indemnify, and save the said trustees, and the party hereto of the second part, against the same, and of and from the payment of any money, costs, counsel fees, charges or expenses for, on account, or by reason thereof.

And further, inasmuch as the said two steamships, Ohio and Georgia, were heretofore pledged to the United States by deed of trust to Prosper M. Wetmore, as trustee for the United States in that behalf, to secure the payment of the sum of two hundred and ninety thousand dollars: Now, therefore, the said George Law, Marshall O. Roberts, Edwin Croswell, and Prosper M. Wetmore, severally and not jointly, each for himself and his heirs, executors and administrators, (and not the one for the others, or any other of them,) doth hereby covenant, promise,

and agree to and with the said parties of the second part, and their successors, that either out of his share or proportion of the mail-pay, earnings, and profits earned on or prior to the said 7th day of May last past, or out of other of his own moneys, he will pay off and discharge his proportion of the said sum of two hundred and ninety thousand dollars, and any interest it may be necessary to pay in satisfaction and towards the discharge of the said pledge. That is to say, the said George Law, that he will so pay off and discharge one hundred and forty-five thousand dollars of the said sum, and the like share of such interest, if necessary, as aforesaid. The said Marshall O. Roberts, that he will so pay off and discharge fifty-five thousand dollars of the said sum, and the like share of such interest, if necessary, as aforesaid. The said Edwin Croswell, that he will so pay off and discharge forty-five thousand dollars of
75 the said sum, and the like share of such interest, if necessary, as aforesaid. And the said Prosper M. Wetmore, that he will so pay off and discharge the remaining forty-five thousand dollars of the said sum, and the like share of such interest, if necessary, as aforesaid.

And the said parties hereto of the second part, in consideration of the foregoing, do hereby covenant, promise, and agree to and with the said parties of the first part, and they, the said parties of the second, shall and will build, construct, finish, and completely equip all and every the steamships, which in and by the contract aforesaid with the United States are contracted to be built by the said Albert G. Sloo, in such manner and at such times as are or may be required by the Navy Department of the United States, and provide for and pay all the moneys necessary therefor. The said parties of the second part, nevertheless, to have the full benefit therein of the building and furnishing of the said three steamships, Ohio, Georgia, and Falcon, as the same have already been placed in the hands of the said trustees, so far forth as the same may amount to a compliance with the said contract.

And also, that all and every the said steamships and their machinery, already built, purchased, or constructed, or to be built, constructed, or furnished, are to be and shall be built, constructed, equipped, and from time to time repaired, under the sole and exclusive superintendence, direction, and control of the said George Law, subject only to such supervision and control as is reserved to the United States or the Secretary of the Navy, by the said contract with the United States, unless and until the service of the said George Law, as such superintendent, shall, by the concurring consent of the said Albert G. Sloo and the parties hereto of the second part, have been dispensed with as aforesaid, and no longer.

And also, that they, the said parties hereto of the second part and their successors, shall and will in all things well and truly fulfil and perform all the duties and services which, in the said contract with the United States, are agreed to be done and performed by the said Albert G. Sloo.

And also, that they, the said parties hereto of the second part, and their successors, shall and will well and truly do, perform, and fulfil all and every the covenants, agreements, and stipulations contained in the aforesaid indentures of the seventeenth day of August and seventh
76 of February, respectively, to be done, performed, and fufillled by the parties hereto of the first part, jointly, as parties to the said indentures of the second part.

And also, that they, the said parties of the second part, and their successors, shall and will, from time to time, and at all times hereafter, fully protect, indemnify, and save harmless them, the said parties hereto of

the first part, and their heirs, executors, and administrators, against their said agreements by them jointly made in and by the above-recited indentures or agreements, or either of them, and of and from all damages, costs, charges, counsel-fees, sums of money, and expenses of every nature, which they, or any, or either of them, shall or may, at any time hereinafter, be in anywise put to, for or on account, or by reason of their making, entering into, or becoming jointly bound by the above-recited indentures and agreements, or either of them, or for or on account, or by reason of anything which may be done or performed or neglected or omitted to be done or performed under the same.

And also, that the said Marshall O. Roberts and Edwin Croswell shall be joint agents in the city of New York, as provided in the said indenture of the seventeenth day of August, 1847, and shall receive from the said trustees the compensation therefor severally as therein provided, unless and until their service shall be dispensed with by the said concurring consent of the said Sloo and the said parties of the second part as aforesaid, and no longer.

And also, that the said George Law shall receive from the said trustees, as a compensation for his services in constructing, equipping, and, from time to time, repairing the said steamships built, or hereafter to be built or furnished, and their machinery, the annual compensation in the last-mentioned indenture provided, so long as his service therein shall be required, as aforesaid, and no longer.

And also, that they will begin, carry on, and complete the steamships hereafter to be built, within the times and by the investment therein of the requisite amounts of money, fully to comply with and perform the aforesaid agreement of the 7th of February last, although they, the said parties of the second part, are to receive from the said trustees none of the earnings, mail-pay, or profits earned prior to the seventh day of May last.

77 And whereas the said George Law, Marshall O. Roberts, and Edwin Croswell, together with Robert C. Wetmore, did become sureties for the faithful fulfilment of the stipulations on the part of the said Albert G. Sloo, contained in the aforesaid contract with the United States, and as such sureties entered into and executed an obligation to the United States for that purpose, it is therefore, in consideration of the foregoing, further hereby expressly covenanted and agreed by the said parties hereto of the second part, for themselves and their successors, that they, the said parties hereto of the second part, and their successors, shall and will, from time to time, and at all times hereafter, fully protect, indemnify, and save harmless the said above-named sureties, and each of them, and their heirs, executors, and administrators, against their said obligation and suretyship, and of and from all damages, costs, charges, counsel-fees, sums of money, and expenses of every nature, which they, or any or either of them, shall or may, at any time, be in anywise put to, for, on account, or by reason of their having become bound as sureties as aforesaid; and will well and truly do, perform, and pay all moneys, and all other things, which such sureties, or either of them, may or can be required to do, perform, or pay, (by reason of having become bound as sureties, as aforesaid,) in any event whatever.

Inasmuch as the mail-pay for services of the said ships down to the said seventh day of May last, and certain of the earnings to that day, have not yet been received and entered in the accounts relating to the said ships, but the same will, when received and entered as between the parties hereto of the first part, and the said Albert G. Sloo, be applica-

ble to the account of re-imbursement of the cost of the said ships, and the interest and commission thereon; it is, therefore, to prevent future misapprehension, expressly declared that the assignment hereby made is subject to such application, and to the full and final adjustment of all the accounts between the parties, according to the rights existing between them, on the said seventh day of May, to be duly adjusted and entered when the earnings and mail-pay down to that date shall be realized; and if, when such accounts are adjusted, the owners of the steamship Falcon, prior to her delivery to the said trustees, shall not have been fully re-imbursed all her earnings and mail-pay down to that date, with interest thereon, according to the provisions of an agreement between the several four parties hereto of the first part among
78 themselves, bearing date the seventh day of February last, the deficiency in such re-imbursement shall, notwithstanding anything herein contained, be paid to the said owners of the Falcon, as herein provided, and be charged to the parties hereto of the second part, by the said four parties severally and respectively, in the proportions in which they by the tenor of such last-named agreement would have contributed out of the earnings subsequent to the said seventh day of May, to make up and complete such re-imbursement.

And it is further mutually agreed that all claims for damages, by reason of any collision happening in the running of the said steamships, or either of them, at any time prior to the said 7th day of May, or that have arisen or may arise in or out of the conduct of the said vessels, or the business thereof, prior to the last-named day, from any cause whatever, shall, when established, together with all the costs and expenses of every kind incurred or which may be incurred, in defending any lawsuits relating to such claims, or prosecuting any appeals therein, be paid in the first instance by the aforesaid trustees as expenses as the same may from time to time be ascertained and determined; the same to be, nevertheless, so charged by them to the account of the said Albert G. Sloo, and of the several parties hereto of the first part, that they shall severally bear and sustain their several just proportion thereof to the same extent as under the several agreements existing between them herein referred to, and a supplemental agreement with the said Sloo, dated the 7th day of February, (not hereinbefore mentioned,) they would bear, had the same been ascertained, determined, and paid on the said seventh day of May last.

In witness whereof the said parties to these presents of the first part have hereunto set their hands and seals, and the parties of the second part have caused their corporate seal to be hereunto affixed, and these presents to be attested by their president, directors, and secretary, by virtue of a resolution of the board of directors, (passed July 8, 1850,) the day and year first above written.

GEORGE LAW. [SEAL.]
MARSHALL O. ROBERTS. [SEAL.]
EDWIN CROSWELL. [SEAL.]
PROSPER M. WETMORE. [SEAL.]

79 Sealed and delivered in the presence of—
T. SPENCER KIRBY.
GEO. E. FAIRCHILD.

By order of the board of directors of the United States Mail Steamship Company.

GEORGE LAW, *President.*
MARSHALL O. ROBERTS,
JAS. VAN NOSTRAND,
EDWIN CROSWELL,
MINER C. STORY,
*Directors.*

[SEAL.]

PROSPER M. WETMORE, *Secretary.*

*Quintuple treaty.*

EXHIBIT E.

Agreement, dated January 21st, 1851, between the Pacific Mail Steamship Company, first part; Wm. H. Aspinwall and others, second part; Howland & Aspinwall, third part; the United States Mail Steamship Company, fourth part; George Law and others, (trustees,) fifth part; Albert G. Sloo, sixth part; Thomas B. Stillman, and others, seventh part, takes effect April 1st, 1851.

This indenture, made this twenty-first day of January, one thousand eight hundred and fifty-one, between the Pacific Mail Steamship Company, of the first part; Wm. H. Aspinwall, Gardiner G. Howland, Samuel S. Howland, Henry Chauncey, Edwin Bartlett, Charles Morgan, and Solomon B. Stone, of the second part; John L. Aspinwall, William E. Howland, and Samuel W. Comstock, the general partners in the limited partnership of Howland and Aspinwall, on behalf of such limited partnership, of the third part; the United States Mail Steamship Company, of the fourth part; George Law, Marshall O. Roberts, Prosper M. Wetmore, and Edward Croswell, of the fifth part; Albert G. Sloo, of the sixth part; and Thomas B. Stillman, Horatio Allen, Robert M. Stratton, George F. Allen, Wm. B. Brown, composing the firm of Stillman, Allen & Co., Wm. W. Webb, the said Charles Morgan, the said Solomon B. Stone, and Robert Latou, of the seventh part, witnesseth:

80 That the said George Law and Marshall O. Roberts, two of the parties of the fifth part, agree to and with the parties of the first and second part, to sell to the said parties of the first part the four steamers now on the Pacific, called the Antelope, the Columbus, the Isthmus, and the Republic, with their tackle, apparel, and furniture, at the price herein agreed to be paid therefor, and to deliver the same to the parties of the first part, at the time and place and in the manner hereinafter provided. The delivery of the said steamers to be made on their first arrival after the first day of April, one thousand eight hundred and fifty-one, in the port of Panama, at such port, and the voyage thus terminated to be for account of the original owners. And the said parties of the first and second parts agree with the said George Law and Marshall O. Roberts that, upon the delivery of the said steamers, in manner aforesaid, or the tender of such delivery on or after the first day of April, one thousand eight hundred and fifty-one, and advice of such delivery or tender received by the said parties of the first part, the said parties of the first and second parts will pay, or cause to be paid, to the said George Law and Marshall O. Roberts, at the city of New York, the price of the said steamers, amounting to the aggregate of five hundred and eleven thousand dollars, ($511,000,) which payment

is to be made as follows: one hundred thousand dollars in the capital stock of the parties of the first part, at par, with the earnings thereon after the first day of April, eighteen hundred and fifty-one, to be transferred to the said George Law and Marshall O. Roberts, either jointly or in such portions severally as they shall jointly in writing request; and the residue of such amount is to be paid in and by stock in the United States Mail Steamship Company, at par, with the earnings thereon, after the first day of April, eighteen hundred and fifty-one, abated from and out of the stock of that company, which will become deliverable according to the provisions hereinafter contained, in payment for the steamers which are sold to the United States Mail Steamship Company, as hereinafter mentioned; such last-named stock, to amount of the aforesaid residue, to be transferred or delivered by the parties of the fourth and fifth parts, or some of them, to the said Law and Roberts, and thereupon to be deemed, to that extent, payment for the last-named steamers.

The said George Law and Marshall O. Roberts further
81 agree to and with the parties of the first part, to sell to the parties of the first part all such coals as they may have on hand at the ports of Panama, Acapulco, and San Francisco, or either of them, on the first day of April, eighteen hundred and fifty-one; and also all such coals as they may have on shipboard, bound to either of such ports at that date, on arrival, and being the coals mentioned in the schedule heretofore exhibited to the parties of the first part by the said George Law, and which coals mentioned in such schedule are not to be added to, nor to be diminished, except by consumption on board the said steamers on the Pacific, of the said George Law and Marshall O. Roberts. The said coals are to be delivered to the said parties of the first part at the ports of Panama, Acapulco, and San Francisco, either or any of them, free of all duties, charges, and expenses of every sort, on the said first day of April, eighteen hundred and fifty-one, or thereafter, when and as the same shall arrive, and are to be taken by the parties of the first part, either afloat or on shore, as the said coals may be when delivery thereof is due as aforesaid. And the said parties of the first part agree with the said George Law and Marshall O. Roberts, to pay to them, in the city of New York, twenty-two dollars ($22) for each ton of two thousand two hundred and forty pounds (2,240) of the said coals so delivered, or tendered for delivery, upon advices being received by the parties of the first part of such delivery or tender. And the said parties of the first part further agree with the said Geoge Law and Marshall O. Roberts to furnish to them for the use of any of the four steamers aforesaid, prior to the first day of April, eighteen hundred and fifty-one, such coals as may be requisite and may be required by them or their agents, for any of such steamers at any port or ports on the Pacific, south of San Francisco, at which the parties of the first part shall have coals to spare, when so required. The coals so furnished are to be deemed an exchange for the like quantity of the coals of the said Law and Roberts transferred as above provided; and should the coals so furnished exceed in quantity the coals delivered by said Law and Roberts as aforesaid to the parties of the first part, the said Law and Roberts agree to pay to
the said parties of the first part, at the city of New York, for such
82 excess, at the rate of twenty-two dollars ($22) per ton of two thousand two hundred and forty pounds, (2,240.)

And the parties of the first and second parts agree with the parties of the fourth and fifth parts, to sell to the parties of the fourth part, on the first day of April, eighteen hundred and fifty-one, the steamers the

Empire City, the Crescent City, the Cherokee, and the Philadelphia, with their tackle, apparel, and furniture; and also the Caribbean, which is to be completed and finished by the parties of the first part, at the price hereinafter mentioned, and to deliver the same to the parties of the fourth part at the time and place and in the manner hereinafter provided. The delivery of the said steamers is to be made on their first arrival after the first day of April, eighteen hundred and fifty-one, in either the port of New Orleans or New York, at such port, and the voyage thus terminated to be for account of the original owners. And the parties of the fourth and fifth parts agree with the parties of the first and second parts that, upon the delivery of the said steamers, in manner aforesaid, on or after the said first day of April, eighteen hundred and fifty-one, and advice of such delivery to the parties of the fourth part, they will pay, or cause to be paid, to the said parties of the first part, the price of the said steamers as follows, viz: For the Empire City, two hundred and twenty-five thousand dollars, ($225,000;) for the Crescent City, one hundred and eighty-seven thousand five hundred dollars, ($187,500;) for the Cherokee, two hundred thousand dollars, ($200,000;) for the Philadelphia, one hundred and eighty-seven thousand five hundred dollars, ($187,500.) Amounting to eight hundred thousand dollars, ($800,000.) And for the Caribbean, the amount of the actual first cost of building, constructing, and finishing the same fully completed and finished as aforesaid, with interest, together with a commission of two and one-half per cent. on such first cost for building the same, which payment of the price of the said steamers is to be made in and by stock in the United States Mail Steamship Company, at par, with the earnings after April first, eighteen hundred and fifty-one, of which stock (so to be appropriated to this payment) an amount equal to the whole price of the four steamers Antelope, Columbus, Isthmus, and Republic, less the said one hundred thousand dollars, shall be transferred and delivered to the said George Law and Marshall O. Roberts,
83 as above provided; and the residue shall be transferred and delivered to the parties of the first and second parts, or to such of them and in such portions as they shall, at or before the delivery thereof, in writing require. If it should happen that either of the above-mentioned steamers, Antelope, Columbus, Isthmus, Republic, Empire City, Crescent City, Cherokee, Philadelphia, or Caribbean should, before the delivery or tender thereof, as herein provided, from any cause be lost or destroyed, or so far injured as to be unfit for service, neither these presents nor the agreements therein contained shall, for that cause, be deemed broken or rescinded, but an abatement shall be made from the above-stipulated prices, as follows, viz: For the loss of the Antelope, ninety-two thousand dollars, ($92,000;) for the loss of the Columbus, one hundred and twenty thousand dollars, ($120,000;) for the loss of the Isthmus, one hundred and two thousand dollars, ($102,000;) for the loss of the Republic, one hundred and ninety-seven thousand dollars, ($197,000;) for the loss of the Empire City, two hundred and twenty-five thousand dollars, ($225,000;) for the loss of the Crescent City, one hundred and eighty-seven thousand five hundred dollars, ($187,500;) for the loss of the Cherokee, two hundred thousand dollars, ($200,000;) for the loss of the Philadelphia, one hundred and eighty-seven thousand five hundred dollars, ($187,500;) for the loss of the Caribbean, the actual cost thereof as above provided. In case either of said steamers should, before the delivery or tender thereof, sustain injury by accident, the same shall be repaired by and at the expense of the present owners, who shall also pay interest on the amount above fixed, to be abated in case of the loss

or destruction of such steamer, until such steamer shall be repaired and delivered, and the stock transferable as the price of such steamer, with all dividends accrued thereon, shall be withheld until such repair and delivery, and then be transferred. It is mutually agreed between the parties of the first and second and of the fourth and fifth parts, that the capital stock of each of the said companies whose stock is to be delivered in payment, as hereinbefore provided, shall not exceed two million dollars, ($2,000,000.)

And the said George Law and Marshall O. Roberts do covenant with the parties of the first part, that, from and after the transfer to them, or one of them, as above provided, of the said one hundred thou-
84 sand dollars of the stock of the parties of the first part, they, one or both of them, jointly or severally, will hold the said one hundred thousand dollars ($100,000) of stock at par, as aforesaid, or an amount of said stock not less than that sum at par, during the present term of the contract of the parties of the first part for carrying the United States mail, provided that the said parties of the first and second parts, some or one of them, from and after the transfer above provided for of stock of the party of the fourth part to them, some or one of them, shall hold the same amount of said last-mentioned stock at par, as aforesaid, during the same period. And the parties of the first and second parts do hereby mutually covenant and agree to and with the parties of the fourth part, that the two new steamers now in progress of building by the parties of the third part, in the city of New York—one at the ship-yard of William H. Webb, and the other at the ship-yard of Smith & Dimon—shall be by them fully built, finished, and completed, with their tackle, apparel, machinery, and furniture of all sorts, in readiness for service, in such manner that they shall be accepted by the Secretary of the Navy, on behalf of the United States, as and for two of the four steamships provided to be built under the the contract with the said Albert G. Sloo, and that the trustees or their successors, hereinafter mentioned, may, at any time after the execution hereof, tender the said steamers to the proper authorities of the United States for inspection by a naval constructor of the United States as contemplated by the said contract, and that the same, when completed, shall, at the discretion of the parties of the fourth part, be run by and under their control and direction; but until fully paid for, only under the said contract, unless by consent of the parties of the third part; and that so soon as *as* the said parties of the fourth part shall have paid to the parties of the third part the first costs of the building, constructing, and completing the said two steamers, including ten per cent. commissions upon such first cost, with interest, the said steamers shall be transferred to the parties of the fourth part, to be by them set over to and registered in the names of the said trustees, who now hold the said mail-contract of said Sloo, or their successors, as trustees; and until such payment shall be fully completed, the said steamers are to stand and remain in the names of the parties of the third part, but subject to the interest acquired therein by the said
85 trustees, by part payments therefor, as hereinafter mentioned; and the said parties of the third part may keep the same insured, to the extent of the amount unpaid them thereon, against fire in port and perils of the seas while at sea, the premiums to be paid by the parties of the fourth part, free of commissions, and the moneys received for losses, if any, to be applied to the payment of the unpaid price of said steamers. And the said parties of the fourth part agree to and with the parties of the first and third parts, that an account shall

be rendered by the trustees, as aforesaid, once in each month ensuing the seventh day of the month next succeeding the completion of the said two new steamers, of all the net earnings, including mail-pay under the contract aforesaid, received by the aforesaid trustees, and come to their hands from the business done by them as such trustees during the preceding month, and shall be furnished to the said parties of the third part monthly, as aforesaid; and that an amount at least equal to one-half of such net earnings shall be paid over by the said parties of the fourth part, upon the receipt thereof from the said trustees, as hereinafter directed, to the said parties of the third part, on the rendering of such account as aforesaid, as and towards payment for the said two new steamers, until they shall be fully paid for, as above provided; and in estimating such net earnings, as aforesaid, all necessary disbursements, whether for expenses, losses, repairs, salaries, premiums of insurance, or other outlays, (exclusive of losses of vessels and of expenses of repairs, of injuries sustained, or damages occasioned by such perils of the seas or other perils as are usually insured against and provided for in the printed policies of the Atlantic Marine Insurance Company, in the city of New York,) shall be deducted from the receipts. From and after the delivery and acceptance of said two new steamers, and until the same are fully paid for as aforesaid, in estimating the net earnings aforesaid, the earnings, including mail-pay, of all the steamers which are owned or run by the parties of the fourth part, or the trustees, shall be included in the account aforesaid; and if the said two new steamers shall not be fully paid for before the expiration of the aforesaid contract, the balance shall be paid at that time by the parties of the fourth part. The payments which shall, from time to time, be
86 made as aforesaid, on account of the said two new steamers, shall be deemed and taken to vest and shall vest in the said trustees, to the extent thereof, an interest as part owners of the said two new steamers; but until such payment shall be fully completed, such interest, so vested as aforesaid, shall not be construed to interfere with the lien of the parties of the third part for the unpaid purchase-money of said steamers, (which lien is hereby declared to be superior to any right in the said steamers acquired by the said trustees on part payment, and to entitle the parties of the third part to resume the possession of the said steamers for their own security in case of any failure on the part of said trustees, or of the parties of the fourth part, to make the payments on account of the said two steamers, as herein provided,) nor with their right to the full benefit of any insurance effected by them on said steamers, to the full extent of the unpaid purchase-money. The said two new steamers, from the time of their completion and acceptance, as aforesaid, shall be at the sole and entire risk of the said trustees and their successors, and shall be deemed, under their aforesaid trust, for all purposes, lost or not lost, with full claims to the parties of the fourth part, for re-imbursement from the said trustees, to the same extent as if the whole title had, at that time, been transferred to the said trustees by the parties of the fourth part, as the assignees and representatives of the parties of the second part to the agreements creating, defining, or declaring their trust; but this provision shall not be taken to impair or alter, in any respect, as against the parties of the first and third parts, the other provisions of this agreement relative to the title to and lien upon the said two new steamers, until they shall be fully paid for. And the parties of the fourth, fifth, and sixth parts mutually agree to and with each other that the said trustees shall and will, and they are hereby directed to, render a monthly account, as

above described, and pay over one-half of their net earnings, as a
said, to the United States Mail Steamship Company, as the assig
and representatives aforesaid. Such last-named payments to be dee
and applied as re-imbursement to that extent of the said company's
vances for the said ships.

And whereas certain of the parties to this contract are to acqu
under its provisions, stock in one or the other of the said
87 companies, to the end that the interests which they will thus
quire may be more clearly ascertained, the parties of the fou
and fifth parts do agree with the parties of the first and second pa
that the steamships the Ohio, the Georgia, and the Falcon, their tac
apparel, and furniture, together with all the fixtures appertaini
thereto, whether at the port of New York or at the other ports to wh
they run, which belong to the United States Mail Steamship Compa
shall be, and they are hereby, valued at a total of one million one h
dred and thirty-two thousand four hundred and forty-four dolla
($1,132,444.00,) and at such valuation are to be estimated as part of
capital of the United States Mail Steamship Company, for which
million of stock has been issued, and the residue is to be issued; a
that any injury by accident to any of said steamers prior to the first d
of April, eighteen hundred and fifty-one, shall be repaired at the cost
the parties now interested therein, unless before that time such steame
steamers shall be lost, or destroyed, or rendered permanently unfit
service; but that the Ohio shall, at the expense of the United States M
Steamship Company, to be paid by said company after the first day
April, eighteen hundred and fifty-one, be coppered and fitted in all
spects, so as to be accepted by the Secretary of the Navy of the Unit
States, as one of the four steamships provided for in the said contract wi
said Sloo. And the moneys advanced by the United States upon t
said steamers, so far as any lien exists upon said steamers, or either
them therefor, shall, as between the parties of the first and seco
parts, on the one side, and the parties of the fourth and fifth parts a
said trustees on the other, be borne and discharged by the parties w
originally derived the benefit therefrom.

And the parties of the first and second parts do likewise agree wi
the said George Law and Marshall O. Roberts, that the steamships
longing to the Pacific Mail Steamship Company, their tackle, appar
and furniture, together with all the fixtures appertaining thereto, at
the ports to which they run, belonging to the said company, are here
valued as follows: The Northerner, the Oregon, the California, t
Panama, the Unicorn, the Tennessee, the Taboga, and propeller Ca
lina, at one million two hundred and ninety-six thousand five hundr
and sixty-two dollars, ($1,296,562.00;) the steamers Columbia, Will
mette, and the propeller Fremont at their actual cost to the P
88 cific Mail Steamship Company, and at such valuation are to
estimated as part of the capital of the Pacific Mail Steamsh
Company; and that any injury by accident to any of said steame
prior to April the first, eighteen hundred and fifty-one, shall be repair
at the cost of the parties now interested therein, unless before that tin
such steamer or steamers shall be lost or destroyed, or rendered perm
nently unfit for service.

In the conduct of the business of the two companies, after the sa
first day of April next, the parties of the fourth part and of the fi
and third parts mutually agree that the parties of the third part sh
be authorized to sell, and shall sell, under the control and instructio
of the parties of the fourth part, all through-passage tickets issued

the parties of the fourth part, and shall receive all passage-money for through passages, and all freight-money for through freights of every description, upon all voyages by any of the steamers of the parties of the fourth or fifth parts, or of said trustees, from New York to any port on the Isthmus of Panama, from New Orleans to any port on said isthmus, from any port on said isthmus to New York, and from any port on said isthmus to New Orleans; provided that the said parties of the third part shall, without delay, deposit all moneys so received, to the credit of the said trustees or their successors, in such bank as the said trustees or their successors may, from time to time, designate—reserving out of such receipts a commission of two and a half per cent. upon the gross amount of all such passage and freight moneys, including the receipts thereof at New Orleans, in full compensation for their own services and those of their clerks, and their office-expenses, (but the said parties of the third part shall not be required to print, advertise, or employ runners or out-of-door agents,) and also in full for the services of the agent at New Orleans, and the expenses of such agency. The foregoing provision is not to be construed to require the parties of the third part to keep or employ an agent at Chagres; and the parties of the fourth part may, in their discretion, employ an agent at Chagres, they paying all the expenses of such agent and agency, and also paying, as they in that case covenant to do, a commission of two and a half per cent. upon the gross amount of the receipts at or by means of such agency, to the parties of the third part. And the said parties of the fourth
89 part further covenant with the said parties of the third part, that, in case the said parties of the fourth part, or the said trustees, shall remove the said parties of the third part from their said agency, without sufficient cause, as hereinbefore and after provided, or shall divert the receipts thereof from them, they will, as damages for such removal or diversion, from time to time, upon demand, pay to the said parties of the third part the full amount of their commission of two and a half per cent., as they would have received the same but for such removal or diversion, without any abatement or deduction whatever; but this covenant shall not be construed to authorize such removal or diversion except for cause as hereinbefore or after provided. And whereas the said firm of Howland and Aspinwall is a limited partnership, which, by its own limitation, will expire during the period of the pendency of the next preceding covenants, the parties thereto agree that, from and after its expiration, the said covenants shall be taken and deemed to be made and to be in force, in favor of the renewed firm, if the same shall be renewed; or, if not renewed, then in favor of either of the general partners in said present firm, whom William H. Aspinwall may designate, and for whom he will become responsible to the parties of the fourth part, provided such renewed firm, or such general partner, shall signify their or his consent in writing thereto. And it is likewise agreed, that the agency at New Orleans, for the sale of tickets, and the receipt of passage and freight money, on account of the parties of the fourth part, for through passage and freight from New Orleans to any port on the Isthmus of Panama, and from any port on the Isthmus of Panama to New Orleans, so far as such business shall be done at New Orleans, shall be with Arnold Harris, as the agent of the parties of the third part, who are hereby declared to be responsible for all moneys he may receive, (until the said William H. Aspinwall shall dissent to his employment,) under the like control and instructions of the parties of the fourth part; such agency to be changed, however, by them, in case of any default of said Harris in the conduct of the business, or in ren-

dering accounts as required, or in paying over receipts. The compensation and expenses of the New Orleans agency to be paid by the parties of the third part, but they are not to be required to advertise,
90 print, or employ runners or out-of-door agents. Any other agent may be appointed, or at any time substituted, at New Orleans by the parties of the third part, they being responsible for all moneys received by such agent; and the parties of the third part, may, at any time, relinquish the New Orleans agency, but in that case they are not thereafter to receive their commissions upon the receipts of that agency. But it is nevertheless covenanted and provided by the said parties of the third part, to and with the parties of the fourth part, that in case the said parties of the third part, or the before-mentioned renewed firm, shall, during the continuance of their agency as aforesaid, at any time, engage or be interested, directly or indirectly, as agents or otherwise, in any steamer or line of steamers that shall run on the route, or between any of the ports, on or between which the steamars of the said parties of the fourth part, or of said trustees, shall then be running, or shall sell tickets, or engage freight, or collect passage or freight money for any such steamer or line of steamers, or knowingly suffer any agent to be and remain in their employment who shall be so directly or indirectly, engaged or interested, or who shall so sell or collect, that then, and in that case, their agency shall forthwith cease; but this proviso shall not be deemed to include steamers running only between New York and Savannah and back, and New York and Charleston and back, as to which the parties of the third part are not restrained. And it is further declared, that if the said Arnold Harris, or any other agent who may be appointed in his stead, shall, in his agency aforesaid, do or permit any of those or the like things which it is above provided that the parties of the third part, in their agency, shall not do or permit, it shall be lawful for the parties of the fourth part forthwith to remove him from said agency.

And the said parties of the first and fourth parts mutually agree that the freight money, exclusive of primage on all gold, silver, or specie, shipped from California or Oregon, to any port or ports on the Atlantic or Gulf, in the United States, or from any port on the Atlantic or Gulf, in the United States, to California or Oregon, by the vessels of the respective parties, after the first day of April, eighteen hundred and fifty-one, shall be divided between the parties of the first part and the said trustees in the following manner: sixty-four per cent. to the parties of the first part, and thirty-six per cent. to the said trustees, and all ex-
91 penses paid or incurred by either, in transporting or protecting the same across the isthmus, shall be borne and paid by the said parties in the same proportions; but if either or both of said parties shall be subjected to payment for losses or expenses, by reason of the loss of any such gold, silver, or specie, by negligence, accident, or otherwise, the same shall be borne as follows: If such losses shall happen to such gold, silver, or specie, in the hands of the agents of the parties of the first part, in California or Oregon, or on the passage to or from Panama, or landing, or embarking, or on shipboard at Panama, the same shall be borne and paid by the parties of the first part exclusively. If such losses shall happen to such gold, silver, or specie, in the hands of the agents of the said parties of the fourth part, or of said trustees, on shipboard, or landing, or embarking at Chagres, ar at any port this side of Chagres, or between Chagres and any such port, or any such port and Chagres, the same shall be borne and paid by the said parties of the fourth part, or said trustees, exclusively. If they shall happen on the passage across the isthmus, or whilst on shore at Panama or Chagres,

and shall be such as either of the parties shall be adjudged to be liable to pay, and shall thereupon pay, then the same shall be borne and paid by the parties respectively, in the proportions of sixty-four per cent. and thirty-six per cent., as above specified. If, on the regular day of sailing of any steamer of either company from any port on the isthmus, no steamer of such company shall be in such port, any gold, silver, or specie brought by the other company to be shipped by such steamer may be shipped by any other steamer at the expense of the company in default. And the said parties of the first part and the parties of the fourth part are to account together monthly upon the basis aforesaid, and the amounts found to be due are to be respectively paid by the parties indebted monthly, or whenever required. And the parties of the first part and of the fourth part mutually agree that the agents and servants of the two lines shall be carried at any time by each, as required by the other, at one-fourth the rates of passage then required from ordinary passengers having accommodations of the same class or grade.

The parties of the first part, as a corporation, and the parties of the second part, except such as are also named parties of the seventh
92 part, severally, each for himself, and not the one for the other, do covenant to and with the parties of the fourth part, and the parties of the fourth part as a corporation, and the parties of the fifth part severally, each one of them for himself, and not the one for the other, do covenant to and with the parties of the first part, well, truly, and in perfect good faith to observe and keep the stipulation following, viz: That from and after the said first day of April, eighteen hundred and fifty-one, during the unexpired term specified in the aforesaid mail contracts of the parties aforesaid with the United States for carrying the mail on the Pacific or on the Atlantic and Gulf of Mexico, or either of them, neither the parties of the first part nor any of the parties of the second part, save such as are also parties of the seventh part, shall be interested in or engaged, directly or indirectly, in running any steamer on the route of the steamers of the United States Mail Steamship Company, or the trustees aforesaid, or between any of the ports to or from which they may run, or at which they may touch on the Atlantic or Gulf of Mexico, (except steamers running only between New York and Savannah, and New York and Charleston,) or be interested, directly or indirectly, in any steamers which shall be so run, or aid, contribute, or assist in any manner towards the employment or running of any steamers on such route, by selling tickets or engaging freight or passengers for them, or furnishing to them freight or passengers, or otherwise, or by knowingly selling or furnishing their own tickets to the owners or agents of any steamer so run, to be sold again to or used by passengers on any such steamer, or shall, after notice thereof, retain in their employment any agent who is so engaged or interested, or hath so aided or assisted or contributed in any manner, directly or indirectly. And likewise that neither the parties of the fourth part nor any of the individuals of the parties of fifth part shall be interested in or engaged, directly or indirectly, in running any steamer on the route of the parties of the first part, or between any of the ports on the Pacific to or from which they may run, or at which they may touch or be interested, directly or indirectly, in any steamer which shall be so run, or aid, contribute, or assist in any manner towards the employment or running of any steamer or steamers on such route, by selling tickets or engaging freight or passengers for such steamer or steamers, or furnishing to them freight or passengers, or other-
93 wise, or by knowingly selling or furnishing their own tickets to the owners or agents of any steamer so run, to be sold again to or

used by passengers on any such steamer, or shall, after notice thereof, retain in their employment any agent of theirs who is so engaged or interested, or hath so aided or assisted or contributed in any manner, directly or indirectly, as aforesaid. And in case of non-fulfillment or breach of this stipulation by any party thereto, the party so failing to fulfill or breaking the said stipulation doth covenant to and with the parties to whom he hath stipulated as aforesaid, that he will, upon demand, pay to such parties the sum of one hundred and two thousand three hundred dollars, ($102,300,) which sum, in consequence of the agreed impracticability of finding any precise measure of proof of the damage which may result from any breach of the said stipulation, or failure to fulfill the same, other than a percentage of the considerations moving between the parties taken as an estimate of the injury to the good will which this covenant is intended to secure, is hereby fixed and agreed upon as the liquidated damages for any such breach or failure to fulfill, and is agreed to be conclusive between the parties. The purchase or holding of stock in either of said incorporated companies shall not be deemed a breach of said stipulation. And if any of the steamers on either ocean shall be at sea on the said first day of April, their proceeding on their voyage to its completion shall not be deemed a breach of such stipulation, and such voyages shall be for account of the original owners, as before provided; and if any of the parties mentioned in the foregoing stipulation are now interested in any steamer which shall be run upon the route prohibited by him or them, he or they shall be allowed three months after the first day of April to sell and dispose of such interest without being deemed guilty on that account of a breach of said stipulation. If either the United States Mail Steamship Company or the Pacific Mail Steamship Company shall refuse to take on freight for any of the parties to this indenture, property belonging to such party, or purchased by him or them on commission, at as low a rate of freight as any other steamer will take the same at the same time and between the same places, then such party or parties shall be at liberty to ship by such other steamer the freight so refused, and such shipment shall not be deemed an infraction of any provision in this indenture con-
94 tained. A bond in the penal sum of two hundred and four thousand six hundred dollars, ($204,600,) conditioned for the payment of the sum of one hundred and two thousand three hundred dollars, ($102,300,) in case the foregoing stipulation shall not be truly and faithfully observed and kept, as above expressed, or a separate covenant to the same effect, with proper recitals, at the election of the party entitled to receive the same, is to be executed and delivered by the parties who have stipulated as above to the parties with whom they have stipulated on the first day of April, eighteen hundred and fifty-one. And for the purpose of establishing and maintaining an entire harmony of interests between the parties of the first part and fourth part, from the first day of April aforesaid, the parties of the first part and the several parties of the second part, except such as are also named parties of the seventh part, each for himself, covenant to and with the parties of the fourth part, and in like manner the parties of the fourth part and the several parties of the fifth part, each for himself, covenant with the parties of the first part that they will, by themselves and their agents, without compensation, aid and assist, by all lawful means in their power, in inducing passengers brought by them, or either of them, to the Isthmus of Panama, and bound for any port beyond said isthmus, on the route of the steamers of the other party or parties, to take passage by the steamers of such other party or parties, and will sell passage tickets for such other party or parties for that purpose whenever they have an opportunity so to do;

and will in like manner aid and assist in inducing the shipment of freight brought by them, or either of them, to the Isthmus of Panama, bound for any place beyond the said isthmus, on the route of the steamers of the other party or parties, and will engage freight with that view whenever they find it practicable so to do; and that any agent of either of the said parties who shall refuse to sell the passage tickets of the other party, or who shall sell the passage tickets of or engage freight for any other steamer or line of steamers running upon the route of the other party, shall be forthwith discharged from such agency; but this is not to apply to the agents of the Pacific Mail Steamship Company at Panama until the thirteenth day of June, eighteen hundred and fifty-one.

And the parties of the first and third parts and of the fourth
95 and fifth parts further agree, that in case an opposition line of steamers shall be started on the Pacific, against the parties of the first part, during the unexpired term of their contracts aforesaid, then either of the said two new steamers may, at the election of the parties of the first part, be sent there by the parties of the first part, on procuring the permission and consent of the United States, by the proper officers; and in such case the parties of the first part shall pay to the said trustees such amount as they shall then have paid on account of such steamer to the parties of the third part, with the interest thereon, and the said trustees shall thereupon be exonerated from any further obligation to pay for such steamer to said parties of the third part; and the residue of the price thereof remaining unpaid shall be assumed and paid by the parties of the first part to the parties of the third part. For the temporary regulation of the business to be done before the first day of April next, it is agreed between the parties of the first and second parts and the parties of the fourth and fifth parts that the parties of the first and second parts may keep up the line now under their direction, called the Empire City line, until that date; but that they shall not run nor suffer to be run with any steamer belonging to them, or any or either of them, more than one trip each way per month between New Orleans and Chagres during the intermediate time, and that the prices of passage and freight between like ports in the steamers of both parties, shall be fixed and arranged at a uniform rate between the parties in the Atlantic and Gulf until the first day of April, and that each shall instruct their agents to conform thereto. And the parties of the first part and the said George Law and Marshall O. Roberts further agree to transmit to their respective agents on the Pacific, by the next mail steamer, instructions directing them to establish uniform rates of passage and freight, and not to deviate therefrom till the said first day of April.

And it is further agreed between the parties of the first, second, fourth, fifth, and sixth parts, the said party of the sixth part concurring therein, as one of the conditions of his assent to these presents, that all the steamships herein provided and agreed to be transferred to the parties of the fourth part shall, when so transferred, be assigned, set over, and delivered to the said trustees as aforesaid; and when so assigned, set over, or otherwise vested in them, (including herein the above-
96 named two new steamers now in progress of building, from the time of their completion and acceptance, as above provided, which, between the parties to this stipulation, and only for the purposes thereof, are to be deemed from that time the property of the said trustees as aforesaid,) shall be by the said trustees held and employed upon the like trusts, and with the same effect, as if they had been built, constructed, completed, and finished under and in pursuance of the aforesaid agreement of August seventeen, eighteen hundred and forty-seven, by and at the expense of the parties thereto of the second part, or their rep-

resentatives, at or by advances to the amount herein agreed to be paid by the parties of the fourth part therefor, and the number of ships contemplated by that agreement is hereby enlarged accordingly; the said ships to be employed in carrying the United States mail, with the concurrence of the proper authorities, or otherwise employed or disposed of as the said trustees may deem most advantageous, and to be commanded and navigated by such officers as they shall think proper; but this stipulation shall not be taken or deemed to diminish or impair any rights hereinbefore secured or given to the parties of the first, second, or third parts, or any of them. But it is agreed that the party of the sixth part shall have the privilege of advancing to the parties of the third part the whole or any part of the amounts which may be required for the building and construction of the said two new steamers at the time or times the same is required for expenditure therein; and in case of such advance, and to the extent thereof, he shall have the same right to repayment therefor, with interest and commissions, as is hereby secured to the parties of the third part.

The said George Law and Marshall O. Roberts are, notwithstanding the foregoing provisions, at liberty to defer the actual transfer to the parties of the first part of any one or more of the said four steamers Antelope, Columbus, Isthmus, and Republic, after the said first day of April; and this agreement shall not for that cause be deemed broken, but the said ship shall not, nor shall either of them, be run by them, or either of them, or with their consent, after that day; and if such transfer of either of said ships shall be deferred for more than six months from the said day, the parties of the first part shall not be bound to accept the said ship or ships so not transferred, but stock of the parties of the fourth part to the amount of the price at which they
97 are above agreed to be estimated in case of loss, shall be transferred to them in lieu thereof by the said Law and Roberts, with any dividends made thereon after the said first day of April. The like privilege of delay is extended to the said Charles Morgan and Solomon B. Stone in respect to the delivery of the Empire City and the Crescent City, subject to the like restriction as to running the same after the said first day of April; and should delay exceed six months from said day, the parties of the fourth part shall not be bound to receive the steamer or steamers the delivery whereof hath been so delayed, but in lieu thereof there shall be transferred to them of their own stock, or deducted from the stock otherwise deliverable by them, the amount at which the steamer or steamers the delivery whereof is so delayed is or are above estimated in case of loss, with any dividends made thereon after said first day of April. If any of the steamers herein provided to be sold shall be at sea on the first day of April, so that an actual delivery cannot then be made, all needful acts of transfer shall be executed and delivered on that day, and the actual possession shall be delivered on their arrival at the port where, as above provided, they are to be delivered. The parties who respect*fu*lly have hereinbefore contracted to sell any steamers to other parties do respectively covenant with such other parties that they will respectively convey, or cause to be conveyed, a good and perfect title to such steamers to such other parties, and that such steamers shall respectively be free and clear of every claim, lien, or incumbrance to any person or persons whatsoever, or that they will discharge the same. The parties of the sixth and seventh parts agree to and execute these presents for the purpose of indicating thereby their assent to the same so far forth as they affect their interests in the property or subjects to which these presents relate, and so far as they operate as a modification of pre-existing agreements to which the parties of the

sixth and seventh parts, or any of them, are parties, or in which they, or any of them, have an interest.

If it should so happen that the parties of the first, second, and third parts shall not, nor either nor any of them, on or before the first day of April, eighteen hundred and fifty-one, obtain, directly or indirectly, a further contract for carrying another monthly mail on the Pacific, then these presents shall cease and be of no other effect, unless Congress
98 shall at its present session authorize the granting of such further contract to them, or some or one of them, or to some person or persons from whom they, or some or one of them, are or shall be entitled to have or receive the same, or some interest therein, and they shall accept such further contract, or unless the said George Law and the said William H. Aspinwall shall agree that it shall go into effect on that or some later day; and the said George Law and the said William H. Aspinwall shall also be at liberty, and they are hereby authorized, in the event of the failure of these presents to go into effect, to make any contract in respect to the said two new steamers which to them shall seem proper, and apply thereto any of the provisions hereinbefore contained, if they shall think it best. It is, however, expressly understood that any contract obtained from or by authority of the present Congress, in which the said parties of the first, second, or third parts, or either of them, shall have any interest, or which shall be obtained, granted, or authorized to be granted by their advice, assistance, or procurement, or with their assent, or with the assent of either of them, and which the said parties, or any of them, shall accept and ratify, or become interested in, shall be deemed, for all purposes, such further contract asis in these presents referred to. If any such contract as is above referred to shall be authorized by Congress at its present session, without indicating or designating any particular person or persons or company to whom it may be granted, and the same shall not have been granted to any one on or before the said first day of April, then the performance of all things herein stipulated to be done or performed on, from, or after the first day of April next, and things to take effect or bear date from or after that day, shall be deferred and suspended until such contracts shall be granted, and this agreement shall then become operative or cease, as the case may be, according to the above provision.

In witness whereof the parties of the first and fourth parts have hereunto set their corporate seals, and the parties of the second, third, fifth, sixth, and seventh parts their hands and seals, the day and year first above written.

{ SEAL OF THE PACIFIC M. S. S. CO. }

WM. H. ASPINWALL, *President.*
WM. H. ASPINWALL.
GEORGE LAW.
EDWIN BARTLETT.
HOWLAND & ASPINWALL.
JNO. L. ASPINWALL.
CHAS. MORAN.
99 S. B. STONE.
G. G. HOWLAND.
S. S. HOWLAND,
(Per his atty., G. G. Howland.)
HENRY CHAUNCEY.
WM. EDGAR HOWLAND.

{ SEAL QF THE U. S. MAIL S. S. CO. }

GEORGE LAW, *President.*
M. O. ROBERTS.
PROSPER M. WETMORE.
EDWIN CROSWELL.
A. G. SLOO.

100 *Final judgment.—(Extract from minutes of court.)*

WASHINGTON, MONDAY, *January* 18, 1875.

The court met pursuant to adjournment.

Present; Charles D. Drake, ch.-justice; Edward G. Loring, Charles C. Nott, and William A. Richardson, judges.

* * * * * * *

MARSHALL O. ROBERTS AND EDWARD N. Dickerson, surviving trustees of Albert G. Sloo,
*vs.*
THE UNITED STATES. } No. 2221.

The chief-justice announced the decision of the court, and judgment was ordered to be entered as follows:

The court, upon due consideration of the premises, find for the defendants, and do order, adjudge, and decree that the claimants' petition be dismissed. The court filed findings of fact.

101 United States Court of Claims.

MARSHALL O. ROBERTS AND EDWARD N. Dickerson, surviving trustees of Albert G. Sloo,
*vs.*
THE UNITED STATES.

*Finding of facts.*

In this case the court finds the facts to be as follows:

1. On the 20th of April, 1847, in pursuance of the fourth section of the "Act providing for the building and equipment of four naval steamships," approved March 3, 1847, (9 Stat. L., 187,) the Secretary of the Navy, on behalf of the United States, entered into the contract with Albert G. Sloo which is annexed to the claimants' amended petition as Exhibit A.

2. The said Sloo applied to Prosper M. Wetmore, George Law, Marshall O. Roberts, and Edwin Crosswell for aid to enable him to fulfill the terms of said contract, and they agreed to aid him, on the terms and conditions set forth in the indenture dated August 17, 1847, which is annexed to said amended petition as Exhibit C.

3. On the 3d of September, 1847, the said Sloo executed to George Law, Marshall O. Boberts, and Bowes R. McIlvaine the assignment of the said contract with the United States, with a paper thereto subjoined, signed by Robert C. Wetmore, Marshall O. Roberts, George Law, and Edwin Crosswell, which assignment and paper are annexed to said amended petition as Exhibit B.

4. On the 8th of July, 1850, Prosper M. Wetmore, George Law, Marshall O. Roberts, and Edwin Crosswell executed the indenture with the United States Mail Steamship Company which is annexed to the said amended petition as Exhibit D.

5. On the 21st day of January, 1851, an agreement in writing was entered into between the Pacific Mail Steamship Company and others, which is annexed to said amended petition as Exhibit E, with the name of "Quintuple Treaty."

6. On or before the 23d of December, 1848, the said assignment by said Sloo of his said contract with the United States was recognized by the Navy Department and the Post-Office Department.

7. Horace F. Clark and Edwin N. Dickerson became, by legal appointment, trustees, under the said indenture of August 17, 1847, in place of George Law and Bowes R. McIlvaine, resigned; and the said Clark has deceased.

8. The said United States Mail Steamship Company was a corporation created by an act of the legislature of the State of New York, passed April 6, 1850; and the said Prosper M. Wetmore, George Law, Marshall O. Roberts, and Edwin Crosswell were members of said
102 corporation; and the said George Law and Marshall O. Roberts were each at different times president thereof.

9. The contract between said Sloo and the United States was performed by the trustees, and all transactions thereunder have been closed, and all accounts connected therewith settled, and all moneys due in relation thereto paid by the United States to said trustees.

10. In the year 1851, while the mail-service as prescribed in the said contract between the said Sloo and the United States was in course of performance, the United States Mail Steamship Company, as the owners, and the said trustees, as the parties in control, under the said so-called "Quintuple Treaty," had in operation a line of steamships, which plied between the city of New York and the port of Chagres direct, and not by way of Charleston, Savannah, or Havana, making trips twice a month each way, and leaving New York and Chagres, respectively, at later days in each month than the steamships which were engaged in carrying the mail between New York and Chagres, via Charleston, Savannah, and Havana, but arriving at New York and Chagres, respectively, at about the same time as those steamers.

11. In June, 1851, the Postmaster-General caused the postmaster in New York to lay before George Law, president of the United States Mail Steamship Company, a letter, which had been received at the Post-Office Department, complaining of the then existing arrangement for carrying the mails between New York and Chagres, on account of the fact that the steamships running direct between those ports performed their voyages quicker than those employed under the contract with said Sloo; whereby it was averred in said letter that parties in New York had to wait two or three days after news was received by the direct steamers before the mail-steamer under that contract arrived.

In response to the matter of this complaint, the said George Law, on the 25th of June, 1851, said, in a letter to the postmaster at New York, as follows:

"The mails for California, via Chagres, and back, are dispatched by the mail-steamships of this company twice each month, on the days originally arranged with the Department. Being required to go and return by way of Havana, and to receive and discharge there the mails from and for New Orleans, Charleston, &c., the passage is usually two days longer than the direct passage to and from Chagres and this port.

"In addition to the mail-steamers, we dispatch also, twice a month, a steamer from this port and Chagres direct. These leave here usually two days later than the mail-steamers via Havana, so as to make the arrival at Chagres at about the same time. Of course the return steamer, with the mail from Chagres, is usually two days later in arriving here, coming via Havana, than the steamer starting at the same time and coming direct. The mail to and from Chagres will therefore be carried with greater dispatch by the direct line, while the mails for New Orleans,

Charleston, &c., must necessarily be carried by the Havana route. If the Department desires the Chagres and California mails, outward or homeward, to be sent by the direct steamers, I shall be happy to direct the commanders of the ships to receive them on board."

On the 1st of July, 1851, the Postmaster-General addressed to said George Law the following letter:

"Your letter of 25th ultimo is received, and, if understood, is satisfactory.

"You say, 'If the Department desires the Chagres and California mail, outward and homeward, to be sent by the direct steamers,
103 I shall be happy to direct the commanders of the ships to receive them on board.'

"We understand this to mean that you will take mails both by your steamers via Havana and by those plying between New York and Chagres direct; and, of course, that this division of the mails is to make no difference in respect to the expense of the service. Are we correct in this?"

On the 21st day of July, 1851, this letter was answered by said Law in the following terms:

"It is the intention of this company, at an early day, if it shall meet with the approbation of the Department, to arrange the running of its steamers each month as follows: Twice between New York and Chagres, direct; twice between New York and New Orleans, via Havana; and twice between New Orleans and Chagres direct, making three distinct routes and six passages per month to and from the respective points of destination. Provision will be made for carrying the mail by each steamer, and to insure the arrival of the California mails at the city of New York and at New Orleans at the earliest day that their arrival at Chagres will enable them to be brought forward. We propose to make trial of this arrangement, and, if it proves satisfactory, to continue it. So long as it is in operation, the direct connection between Havana and Chagres may be dispensed with, as the Charleston and Savannah mails may be sent via New Orleans.

"In expressing in my letter of the 25th ultimo the readiness of this company to instruct the commanders of their steamers, direct as well as by the way of Havana, to convey the California mails, if desired by the Department, it was not my intention to preclude a claim for reasonable additional compensation for such service. Although we desire to meet fully the requirements of the service and the wishes of the Department, it is not expected, I presume, that the mails can be carried outward and homeward six times per month, with the necessary additional clerks or agents, for the same sum for which we contract to carry them twice monthly. Still, desirous of promoting to the utmost the interest and convenience of the public, we are entirely willing to perform the additional service in the confident expectation that a sense of justice will induce Congress to make such farther provision as may be considered a suitable compensation for it."

This letter was not received at the Post-Office Department until July 29, 1851.

On the 26th of that month the Postmaster-General, by telegraph, requested the postmaster at New York to see if Mr. Law would take a mail by his steamer of the 28th of that month, and, if so, to make it up and send it. On the same day the postmaster at New York answered, by telegraph, that the steamer of the 28th would take a mail for California, and that he would make up a mail by her; and he asked to be advised if he should continue making up mails by the direct

steamers, which sailed from New York on the 13th and 28th of each month, and also by the steamers via Havana, which sailed from New York on the 11th and 26th of each.

This request he repeated in a letter dated August 7, 1851; in answer whereto the Postmaster-General, on the 8th of that month, said:

"In answer to your letter of the 7th instant, I have to say that you will make up and forward mails by Mr. Law's direct steamers to Chagres, with this understanding, however, that this Department does not thereby become responsible for any additional expense."

On the 9th of August, 1851, Marshall O. Roberts informed the
104 postmaster at New York, by letter, that the mails for Chagres, both direct and via Havana, would be carried by the United States Mail Steamship Company upon the terms and in the manner theretofore stated to the Post-Office Department, viz, compensation for any extra or additional mail-service to be submitted to Congress, without requiring a prior stipulation to pay from the Department.

This letter was, on the day of its date, transmitted by the postmaster at New York to the Postmaster-General, with request to be advised by telegraph, provided the latter wished a mail sent by the steamer Georgia, which was to sail on the ensuing 13th of that month.

On the 11th the Postmaster-General telegraphed to the postmaster at New York to send a mail for California by the direct steamer of the 13th.

This mail of the 13th of August, 1851, was the first for which the claimants demand compensation in this suit.

Afterward the mails were sent on the direct steamers between New York and Chagres on the following dates:

From New York, August 28, September 13 and 27, October 13 and 25, November 11, December 11, in the year 1851; and January 10, 1852.

From Chagres, September 7 and 20, Ooctober 5 and 18, November 5 and 23, and December 7, in the year 1851; and January 7 and February 4, in the year 1852.

From the last named of these dates of departures from the respective ports, the said direct steamers did not run until the 26th of April, 1852, during which interval the port of those steamers in Central America was changed from Chagres to Aspinwall.

The Post-Office Department having been informed by Marshall O. Roberts that the departure of the direct steamers would be resumed on the 26th of that month, and being inquired of by the postmaster at New York whether the instructions to make up mails for the direct steamers were still in force, the Postmaster-General directed the postmaster at New York, if the contractors should resume the running of those steamers on the 11th and 26th of the month for Chagres and San Francisco, to make up and send mails by said direct steamers on said days as theretofore under the original order.

In a letter addressed May 18, 1852, by the Postmaster-General to William H. Aspinwall, president of the Pacific Mail Steamship Company, in reference to a proposed change in the times of departure of the direct steamers between New York and Aspinwall, to which the Postmaster-General had assented, that officer said:

"Under these circumstances I gave my assent to the change, with the understanding, of course, hitherto existing, that there was to be no additional expense for these additional trips."

The letter containing these words was shown by William H. Aspinwall to George Law, president of the United States Mail Steamship

Company; and the said Aspinwall, on the 25th of May, 1852, w
letter to the Postmaster-General in answer thereto, in which h
the following language:

"I have seen Mr. Law, the president of that company, and
willing that the mail-boats shall run direct between New Yo
Aspinwall, and New Orleans and Aspinwall, understanding tha
the increased service you may confirm in sanctioning this arrang
you authorize no corresponding change in our or his compensa
more specially detailed in the letter of Mr. M. O. Roberts to you
21, 1851."

105 At the close of the letter containing these words, the said
Law wrote his concurrence in said letter.

In reply to this letter the Postmaster-General, on the 31st o
1852, wrote to said William H. Aspinwall as follows:

"In reply, I have to inform you that, agreeably to the propo
above referred to, I have made an order (contingent upon the
rence of the Secretary of the Navy) for the great through m
tween New York and San Francisco to be sent from New York,
5th and 20th of each month, direct to Aspinwall, instead of the
24th, via Havana; and from New Orleans, on the 7th and 22d
month, also direct to Aspinwall, instead of via Havana, on co
that the present semi-monthly service between New York an
Orleans, via Havana, and back, shall still be continued, and w
distinct understanding that, in thus giving my assent to this a
ment, I in no way consent to any increased expense in the matter
by a direct allowance from the Treasury or by favoring any appl
which may be hereafter made elsewhere for increased compensat

A copy of the letter containing these words was, on the 1st o
1852, transmitted by the Postmaster-General to the Secretary
Navy, with request that if he concurred therein he should adv
respective parties interested; and the Secretary of the Navy, on
of that month, answered that he concurred, "but with the
understanding that no allowance from the Treasury, or any appl
which may hereafter be made elsewhere for increased compen
will receive the sanction of this Department."

A copy of this letter of the Secretary of the Navy was, by th
master-General, transmitted to George Law on the 3d of June, 1

The Postmaster-General having, on the 1st of June, transmi
said Law a copy of the aforesaid letter of May 31 to William H.
wall, the said Law, on the 8th of June, wrote to the Postmaster-
as follows:

"Upon the terms and conditions prescribed in the letters fr
Post-Office and Navy Departments, of the 1st and 2d instant, I
consider it compatible with the interest of the company to ca
the proposed arrangement for increased mail service between th
and California. This company is prepared, agreeably to our le
the 21st of July, 1851, to carry the mail direct between New Yo
Aspinwall, and between New Orleans and Aspinwall, discontinu
line between Havana and Chagres, and run the line direct betwe
York and New Orleans, touching at Havana twice a month, an
to Congress the compensation for the increased service over the
paid under the existing contract, the company retaining the r
discontinue such increased service upon giving the Departme
month's notice, and to resume the service as now performed, acc
to the requirements of the contract, viz, twice each month betwe
York, New Orleans, Havana, and Aspinwall. This is the only

of the joint letter of the 25th of May last in which this company was interested, and to which its assent was given."

On the 10th of June, the Postmaster-General replied as follows:

"Your letter of the 8th instant is received, declining to carry out the arrangement between New York and Aspinwall, and New Orleans and Aspinwall, contemplated by the conditional order of the 31st ultimo, on the ground, as it is understood, that the Secretary of the Navy and Postmaster-General will not hold themselves liable, either directly or indirectly, for any additional expense in the matter. In order, therefore, that no time may be lost in making the existing arrange-
106 ment better known to the public, I inclose a schedule blank, which you will be pleased to fill with the proper dates of arrival and departure at the several ports named, and return at your earliest convenience. The postmaster at New York will be instructed to forward no mails by the irregular steamers, except with the positive assurance that they will go forward from Aspinwall and Panama without delay, and without additional expense to the Department."

On the 14th of June, the Postmaster-General, in a letter to William H. Aspinwall, said with reference to the said letter of George Law of the 8th of that month, as follows:

"It is not perceived that the order, as made, differs from Mr. Law's proposition essentially in any respect, except it be in the fact that the Secretary of the Navy and Postmaster-General decline to be responsible, either directly or indirectly, for any additional expense in the matter; in other words, they decline to join in submitting the subject to Congress hereafter, upon a question of increased compensation to the company. If the matter must be submitted to Congress, would it not be advisable that it be done at once?"

On the 15th of June, George Law answered the Postmaster-General's letter of the 10th of that month to him, and used the following language:

"The impression of the Department that this company declines to carry out the proposition for such increased service as shall be required for direct mails between New York and Aspinwall, New Orleans and Aspinwall, and New York and New Orleans via Havana, each twice a month, 'on the ground that the Secretary of the Navy and the Postmaster-General will not hold themselves liable, either directly or indirectly, for any additional expense in the matter,' is not, as the case is understood by the company, the actual attitude in which the matter stands.

"In my letter to the Department of the 21st July, 1851, embodying this proposition, it was alluded to as an experiment, intended to meet the public wants, and a general demand for increased mail facilities between the Atlantic and Pacific portions of the United States, beyond the stipulations of the existing contract, which being voluntary on our part and requiring the employment of several additional steamers, we claimed the right, should it prove too onerous and expensive to the company, to discontinue, and to return to the existing schedule upon giving the Department one month's notice.

"In relation to compensation, I said: 'Still, desirous of promoting to the utmost the interest and convenience of the public, we are entirely willing to perform the additional service, in the confident expectation that a sense of justice will induce Congress to make such further provision as may be considered a suitable compensation for it.'

"This was the basis of the recent renewal of the proposition in the joint letter of the 25th May last, but the tenor of the letters of the Secretary of the Navy and the Postmaster-General of the 1st and 2d instant seems to admit of an interpretation beyond a determination not to hold

themselves liable, directly or indirectly, for any additional expense. It seems to preclude the idea of any application hereafter on the part of this company to Congress for any additional compensation, whatever may be the additional performance of mail-service, and to be a distinct negative by the Departments, to which we become parties, upon anything additional that Congress may deem it just and expedient to allow. It seems also to preclude the right on the part of the company to go back to the schedules under the contract.

"While it has not been the intention of this company to hold either of the Departments liable, directly or indirectly, for any additional mail service beyond the conditions of the contract, but to perform it subject entirely to the decision of Congress, I desire respectfully to say that I do not feel authorized to place the company in a position that would preclude it from applying for or accepting such additional allowance as in the judgment of Congress might be considered equitable.

"By the terms of the contract for running between New York and New Orleans, Havana, and Chagres, twice each month, we stipulated to employ five steamships in the performance of the mail service, two of them being spare ships. The proposed service will require six steamers in constant service and three spare ships. We were entirely willing to make the trial, and to continue the service if it should prove as advantageous to the public as was supposed, and the business of the company would justify the increased expenditure to which it would be subjected; but if it should not, or if Congress should not regard it of sufficient importance to pay such compensation as would enable the company to perform the additional service without loss, the company reserved the right to return to the former schedule, viz, twice a month between New York and New Orleans, and twice a month between Havana and Aspinwall. In such case, it was also the intention to give the Postmaster-General due notice, one month being thought sufficient for that purpose.

"Upon this basis the company is prepared to enter at once upon this arrangement, to carry it out to the best of its ability, and to contribute, to the extent of its means, to the mail facilities between New York and California."

When this letter was written, the writer thereof had no knowledge of the letter of William H. Aspinwall, of the 12th of June, 1852, to the Postmaster-General, and the reply of the latter thereto, of the 14th of that month, as hereinbefore set forth; but afterward having received from said Aspinwall copies thereof, he, on the 16th of June, addressed another letter to the Postmaster-General in relation to said reply, wherein he used the following language:

"I perceive by the reply that we have given a construction to the letters of the Secretary of the Navy and the Postmaster-General, addressed to me, different from that given by the Departments themselves. Upon the basis of my letter of yesterday, which seems to be in accordance with the reply of the Department to Mr. Aspinwall of the 14th instant, we are prepared to enter at once upon the proposed arrangement, and to try it in accordance with the inclosed schedule."

On the same 16th of June, the Postmaster-General instructed the postmaster at New York not to send any mails by the direct steamer to leave on the 20th of that month, unless the contractors should give assurance that they would go through without delay, and without additional expense to the Department.

On the 18th of June, the Postmaster-General replied to the letters of George Law, of the 15th and 16th of that month, as follows:

"In reply, I have to say, that, so far as this Department was concerned, and the same, we have no doubt, is true of the Navy Department, it was not the intention to hold your company to the proposed arrangement, after a fair trial, should the change be found to operate disadvantageously to either party. It is, therefore, understood, that should it be found to the interest either of the company or the Government, to return to their existing arrangement, this may be done, as you propose, on a month's notice by one party to the other; and the change may take effect from and after the 5th of next month."

On the 22d of June, no reply having been received at the Post-
108 Office Department to this letter, the Postmaster-General again wrote to George Law that, owing to the non-reception of a reply, "the existing arrangement will continue until further order, and in the mean time the Department will consider the propriety of adopting fixed schedules for the coming year, or of submitting the whole matter for the action of Congress."

Afterward, an explanation of the absence of a reply having been given, the Postmaster-General, on the 24th of June, wrote to George Law as follows:

"The schedule proposed for the direct line between New York and Aspinwall, and New Orleans and Aspinwall, and the line between New York and New Orleans, via Havana, has been adopted, to go into effect on the 5th day of July next."

12. From the date of this letter till the 20th of September, 1859, the mails for California via Aspinwall were regularly sent by the steamers running direct between New York and Aspinwall; and such mails were not sent during that time by the steamers which touched at Havana, except that between July, 1852, and September, 1854, the United States Mail Steamship Company and the said trustees, with the approval of the Navy and Post-Office Departments, ran a line of steamers twice a month each way, between New Orleans and Aspinwall direct, by which mails from California to the southwestern portion of the States lying east of the Rocky Mountains were brought from Aspinwall to New Orleans. While the steamers thus ran direct between New Orleans and Aspinwall, no steamer was run by said parties between Havana and Aspinwall; but with this exception, a steamer ran regularly between those points in accordance with said Sloo's contract. For carrying the mails between New Orleans and Aspinwall direct, the claimants, at the trial, expressly abandoned all claim against the defendants.

13. From July 1, 1852, till September 20, 1859, the said direct steamers, carrying mails, performed 187 trips from New York to Aspinwall, and 184 trips from Aspinwall to New York. On each of the former class of trips the mails averaged thirty tons, and on each of the latter class fifteen tons; and on the trips made prior to July 1, 1852, the same average existed.

14. During all the time that the mails were carried on said direct steamers, the average value of carrying first-class freight on said steamers between New York and Aspinwall was six cents per pound.

15. No allowance has been made by Congress to the claimants on account of the carrying of the mails on the direct steamers, as hereinbefore set forth.

Upon the foregoing facts, and those found in response to requests made by the claimants, the court being equally divided in opinion as to the right of the claimants to recover, one of the judges who considers them entitled to recover concurs with those holding the adverse view,

in ordering that, pro forma, for the purposes of an appeal, the petition be dismissed.

109 *Claimants' request for finding of facts.—Filed December* 26, 1874.—*J. R.*

United States Court of Claims, December term, 1874.

MARSHALL O. ROBERTS AND EDWARD N. DICKerson, surviving trustees of Albert G. Sloo,
*vs.*
THE UNITED STATES.
} No. 2221.

And now, upon the trial of said cause, come the plaintiffs and request the court to find the following facts in addition to those found by the court:

1. That George Law and Marshall O. Roberts (together with Bowes R. McIlvaine) accepted and entered upon their duties as trustees under the indentures of September 3d and August 17, 1847, being Exhibits B and C, annexed to the amended petition, as found in paragraphs 2 and 3 of the findings of fact by the court; that George Law continued to act as trustee until April 11, 1854, when he resigned.

2. That after the making of the indenture, July 8, 1850, (being Ex. D to the amended petition, and described in par. 4, findings of fact by the court,) and in accordance with its provisions, the United States Mail Steamship Company became and were substituted for and stood in the place and stead, as cestui que trusts, of the parties of the second part, to the deed of trust of August 17, 1847, (Ex. C,) to wit, Messrs. Law, Roberts, Croswell, and Wetmore; and the trustees, during the continuance of the trust, accounted with and paid the various sums of money due to the United States Mail Steamship Company as cestui que trusts, instead of accounting with or paying the same to Messrs. Law, Roberts, Croswell, and Wetmore.

110 3. That the ships engaged in the performance of the regular mail service under the contract between said Sloo and the United States, set forth in par. 9 of the findings of fact by the court, and the ships engaged in the performance of the extra or direct service, as set forth in par. 10, were both and equally under the ownership, control, management, and direction of the trustees.

4. All the steamships, whether built and accepted under the contract made between said Sloo and the United States, or whether purchased and brought in under the quintuple treaty, came alike into the ownership, possession, and control of the trustees; they were all alike registered in their names, and were alike run by them under the trust.

Some were lost at sea; some were worn out in their service and sold; one was burnt at the dock, and those remaining at the expiration of the contract in 1859 were sold.

The proceeds arising from the sale, wherever made, went into the hands of the trustees, as part of the trust fund.

5. The earnings of all these ships, whether those built and accepted under the contract made between Sloo and the United States, or those purchased and brought in under the quintuple treaty, which earnings were made either from freight, passengers, or mails, during the continuance of the contract; and also the proceeds of those sold at its close, went into the hands of the trustees as it accrued as part of the trust fund. They paid out of it all losses and expenses, and the balances

were in their hands, to be distributed by them under the provisions of the deed of trust.

6. That the ships of both kinds, contract and extra, whether those built and accepted under the contract made between Sloo and the United States, or those purchased and brought in under the quintuple treaty, were brought in and run by the trustees under the original trust;

111 and in the performance of the mail service on this fast line, the ships of both kinds, contract as well as extra, were used by the trustees indiscriminately, and without reference to their character as such; that is, some of the contract-ships performed some of the extra service, and some of the extra ships performed some of the contract service; and in this respect no distinction was made between the one kind or the other, and the profits and losses arising from both were apportioned and divided according to the term of the original deed of trust.

7. The mail service performed by steamers running direct between New York and Aspinwall, and between New Orleans and Aspinwall, and not via Havana, as the same is described in paragraphs Nos. 10, 11, 12, and 13, and about which the correspondence was carried on as set forth and described in paragraph 11, findings of fact by the court, was extra and in addition to that required and performed under the original contract made between Sloo and the United States.

8. The extra mail service, described in paragraphs Nos. 10, 11, 12, and 13, findings of fact by the court, was performed under an arrangement, made in writing, between the Post-Office Department and the trustees, by which it was agreed that the Post-Office Department should and did thereby give the necessary order, authority, and direction to carry the mails on the fast line run by steamers direct; that said service was extra and in addition to that required under the contract made between the United States and said Sloo; that it was not to be included in, nor covered by, the compensation provided in said contract; that there was no intention to preclude a claim for additional compensation for such service, but the parties to the arrangement not being able to agree upon the amount, it was further agreed between them that the question of compensation should be submitted to Congress, without requiring a prior stipulation to pay from the Department.

112 9. The correspondence set forth in paragraph 11, findings of fact by the court, commencing between the Postmaster-General and William H. Aspinwall, and continued by George Law and Marshall O. Roberts, grew out of, and had reference to, 1st, a proposed change in the days of departure from New York; and, 2d, the establishment and running of a direct line between New Orleans and Aspinwall, and the suspension during its continuance of the regular line between Havana and Aspinwall.

10. During the fall and winter of 1851–'52, the days of departure of the steamers running direct from New York to Chagres were changed from the 13th and 28th to the 11th and 26th of each month, and in the spring and summer of 1852 they were changed from 11th and 26th to the 5th and 20th of each month.

In addition to the correspondence set out in paragraph 11 of the findings of fact by the court, the plaintiffs request the following additional letters and correspondence:

11. On the 30th of April, 1852, Marshall O. Roberts sent the following letter to the Postmaster-General:

"SIR: Referring to your letter of the 9th instant, [in which complaint was made to him of the interruption on the fast line between New York

and Aspinwall direct, since January of that year,] and to my reply of the following day, I have now the honor to inform you that the steamers of this line will, for the present, leave New York for Aspinwall, Navy Bay, on the following days, viz:

"For Aspinwall direct, or via Jamaica, on the 5th and 20th of each month, to return direct to New York." * * *

113 12. On the 3d day of May the postmaster at New York sent to the Postmaster-General the following letter:

"If the proposition submitted by Mr. Roberts to you, on the 30th of April, meets your approbation, will you be kind enough to instruct me by telegraph, on the 4th instant, and as early as possible, whether I shall make up a mail per Crescent City, on the 5th instant?"

13. To which the Postmaster-General answered on the 4th of May as follows:

"Mr. Roberts proposed to take mails by the direct steamers from New York on the 5th and 20th, and by the Havana and New Orleans line on the 9th and 24th of each month.

"You will, therefore, be pleased to make up and send mails accordingly, commencing to-morrow, as requested in my telegraphic dispatch to you of this morning."

14. The telegram of the 4th instant, mentioned in the last clause of the above letter, is not in the record.

15. On the 4th of May, 1852, the Postmaster-General sent the following letter to Marshall O. Roberts:

"SIR: Your letter of the 30th ultimo, proposing to take mails by your direct steamers, to sail hereafter on the 5th and 20th, instead of 11th and 26th of each month, came to hand this morning.

"The postmaster of New York is advised of this proposition, and is instructed to make up and forward mails accordingly, commencing with the steamer of to-morrow."

16. On the 17th of June, 1852, William H. Aspinwall sent the following letter to the Postmaster-General, in answer to his letter of June 14th:

"SIR: I have seen Mr. Law since receiving your letter of the 14th instant, and find, as I expected, that he misunderstood your previous letter. I hope that after receiving his letter, which went forward by the last mail, there will be no obstacle in the way of our making a good beginning, on the 5th July, of the new arrangement.

"In answer to the closing inquiry in your letter, I beg leave to suggest that as this arrangement is to be continuous, only in case it is successful, no appeal could be properly made to Congress until the experiment has been tried."

17. On June 18, 1852, M. O. Roberts sent through the postmaster at New York the following letter, which was, on the 19th of June, forwarded by him to the Postmaster-General:

"SIR: In relation to the direct steamer of the 21st, I presume
114 that our correspondence and that of Mr. Aspinwall with the Department (not received at the Department when Mr. Dundas's letter was written) was satisfactory, and that the contemplated arrangement for direct mails between New York and Aspinwall, and New Orleans and Aspinwall, will go into early effect."

18. On the 18th of August, 1854, M. O. Roberts wrote and sent the following letter to the Postmaster-General:

"SIR: In accordance with the understanding had between this com-

pany (as assignee of A. G. Sloo) and the Department in the month of June, 1852, when the present arrangement for transporting the mails on the route between New York, Havana, New Orleans, and Chagres was made, which understanding was that the arrangement might be discontinued upon either party giving to the other thirty days' notice thereof, and the route named in the contract to be resumed, (for the particulars of which arrangement I beg to refer you to the letter of the Department of June 18, 1852, to George Law, esq., and to Mr. Edwin Croswell's reply thereto of the 23d of the same month,) I beg leave respectfully to inform the Department that that part of the arrangement referred to by which a semi-monthly mail direct, between New Orleans and Aspinwall, has been carried for the past two years, will be discontinued commencing with the departure from New Orleans of the 20th of September proximo, and the California mails, to and from New Orleans, will thereafter be carried via Havana. The dates of sailing of the steamers running between New York, Havana, and New Orleans will be changed, so as to make the necessary connections at Havana.

"I give you below a schedule of the departures, together with the probable dates of arrival. * * * * *

"The direct line of steamers between New York and Aspinwall, sailing from here on the 5th and 20th of each month, will, for the present, be continued as heretofore."

19. To which the Postmaster-General answered, under date of September 4, 1854, as follows:

"SIR: Your letter of the 8th ultimo was duly received, giving notice of the intention of your company to discontinue, from and after the 20th instant, the present direct line between 'New Orleans and Aspinwall,' which was provided for in the order of 31st of May, 1852; and that the California mails to and from New Orleans will thereafter be conveyed via Havana.

* * * * *

"Your proposition is understood to be that the present semi-monthly lines between 'New York and Aspinwall direct,' and between 'New York and New Orleans, via Havana,' will both be continued as heretofore, the only change being to substitute a direct semi-monthly line between Havana and Aspinwall for the present line between New Orleans and Aspinwall direct.

"I regret deeply that your company contemplates making any
115 change whatever in the present arrangement, and especially that the direct semi-monthly line between New Orleans and Aspinwall is to be abandoned."

20. And Marshall O. Roberts sent to him the following reply:

"SIR: I have the honor to acknowledge the receipt of your letter of 4th instant, recognizing and approving the schedule of running the ships of this company between New York, Havana, and New Orleans, and between Havana and Aspinwall, as advised in my letter of the 8th ultimo. The change, as you suppose, consists solely in the substitution of the line between Havana and Aspinwall for the direct line between New Orleans and Aspinwall, being a return to the original schedule, in precise accordance with the terms and conditions of the existing contract.

"I cannot but participate in your regrets that the company have felt compelled to withdraw the direct line between New Orleans and Aspinwall. That line was established, and the large additional service be-

yond the requirements of the contract with the Government undertaken, from a desire to afford all the facilities in our power to the Western and Southwestern States, not only for a direct intercourse with California, but for the transmission of the mails to and from that section of the Union.

"The experiment has been fairly made during a period of more than two years, and has resulted in a monthly loss to the company, and will eventuate in a very large aggregate loss, unless Congress shall direct that a reasonable compensation be paid for the extra mail service which, under the circumstances, we have not hesitated to perform, and which we regret to withhold, but which we do not feel justified in continuing at a large pecuniary sacrifice to the company.

"By a computation, made from the company's books, the losses incurred by running the direct line between New Orleans and Aspinwall during the single year ending the 30th of June last amounted to an aggregate of more than one hundred and five thousand dollars, exclusive of insurance and wear and tear. If these last two items be added to the actual running losses, the aggregate would reach nearly two hundred thousand dollars."

No reply was made by the Postmaster-General to this letter.

21. That the interruption in the running of the fast line between New York and Charges direct, from January and February to April of 1852, mentioned in paragraph 11, findings of fact by the court, arose by reason of the breakage of, and repairs to, one or more of the steamers employed, and not by reason of any permanent suspension or intended abandonment of the line.

116 22. The abandonment, on the trial, by the plaintiffs, of compensation for carrying the mails between New Orleans and Aspinwall, as set forth in paragraph 12, findings of fact by the court, was expressly stated by them to arise solely from failure of proof as to the weight of mails and the price of carrying between those ports.

23. The act of July 14th, 1870, was passed by the Congress of the United States, and approved by the President, as the same is set forth in the amended petition.

24. The plaintiffs, their predecessors, their assignors, and their cestui que trust, are, or were in their lifetimes, citizens of the United States; they have at all times borne true allegiance to the Government, and have never afforded aid, comfort, or encouragement to rebellion against said Government.

THOMAS WILSON,
*Attorney for Plaintiffs.*

Upon which the court made the following endorsement and orders of allowance and refusal:

Of the foregoing requests, numbers 1, 5, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 24 are allowed.

Number 2 is allowed, omitting all between "1850" and the words "the trustees."

Number 3 is allowed, omitting the word "ownership."

Number 4 is allowed, omitting the word "ownership," and the
117 words "they were all alike registered in their names."

Number 6 is refused as immaterial, there being no controversy as to what particular ships performed either service.

Numbers 7 and 8 are refused, because setting forth the conclusions of law.

Number 9 is refused, because the finding of facts by the court suffi-

ciently indicates what the correspondence grew out of and what it referred to.

Number 10 is refused as immaterial, there being no controversy as to the days of departure of the steamers.

Number 23 is refused, because the court takes notice of all acts of Congress.

*Motion for appeal.*

MARSHALL O. ROBERTS AND EDWARD N. DICKerson, surviving trustees of Albert G. Sloo,
*vs.*
THE UNITED STATES.

Now come the plaintiffs in the above-entitled cause, and pray
118 the court for an appeal to the Supreme Court of the United States from the judgment of this court.

THOMAS WILSON,
*Attorney for Plaintiffs.*

(Endorsed:) Filed Jan'y 19, 1875.—A. H.

*Allowance of appeal.*

(Extract from minutes.)

WASHINGTON, TUESDAY, *Jan'y* 18, '75.

The court met according to adjournment.

Present: Charles D. Drake, ch. justice; Edward G. Loring, Charles C. Nott, William A. Richardson, judges.

* * * * * * *

MARSHALL O. ROBERTS ET AL.
*vs.*
THE UNITED STATES.

Mr. Wilson, for the claimants, presented an application for the allowance of an appeal, filed of this date, and it was allowed as prayed for.

By the court.

(No opinion was delived by the court.)

119 In the Court of Claims.

MARSHALL O. ROBERTS AND EDWARD N. DICKerson, surviving trustees of Albert G. Sloo,
*vs.*
THE UNITED STATES.
No. 2221.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the solicitor for claimants for the allowance of an appeal, as filed in the clerk's office January 19, 1875, and of the order of the court of January 19, 1875, allowing the same; of the finding of facts by the court, and of the order of said court pro forma for the purposes of an

appeal; of the claimants' requests for additional findings of fact, and the orders of the court endorsed thereon.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this sixteenth day of February, A. D. 1875.

[SEAL.]

JOHN RANDOLPH,
*Asst. Clerk Court of Claims.*

(Indorsement on cover:) No. 539. Marshall O. Roberts & Edward N. Dickerson, surviving trustees of Albert G. Sloo, appellants, vs. The United States. Court of Claims. Filed 24th June, 1875.

IN THE

# Supreme Court, U. S.

## APPEAL FROM THE COURT OF CLAIMS.

MARSHALL O. ROBERTS AND OTHERS,
*Appellants,*

*against*

THE UNITED STATES,
*Appellees.*

# BRIEF FOR APPELLANTS,

**Submitted under 20th Rule.**

THOMAS WILSON,
*For Appellants.*

NEW-YORK :
S. W. GREEN, Printer and Electrotyper, 16 and 18 Jacob Street.

1875.

# In the Supreme Court

## OF THE UNITED STATES.

| | |
|---|---|
| MARSHALL O. ROBERTS and others, *Appellants*, *against* THE UNITED STATES, *Appellees.* | No. 539. |

## STATE OF THE CASE.

On the 20th day of April, 1847, Albert G. Sloo made a contract with the United States of America, represented by the Secretary of the Navy, whereby he agreed to build five naval steamships, of which four were to be "not less than fifteen hundred tons burden," and one to be "not less than six hundred tons burden." These steamships were to be constructed after the pattern of the steamship Missouri, and fit for naval service. Four of them were to carry the mails between New-York and New-Orleans, touching at Charleston, Savannah, and Havana, twice a month and back; and the one of six hundred tons burden was to be run from Havana to Chagres and back twice a month, carrying the mails for the Pacific.

The contract contained this further provision:

—"And it is further agreed by and between the parties "aforesaid, that on tender of compensation by the said Go- "vernment of the United States, *not exceeding a due pro- "portion of the pay herein stipulated*, the said A. G. Sloo, "contractor, shall convey any mail or mails of the said "United States which he may be required to convey on any "steamship which he, the said Sloo, may *own, run, or con- "trol on the routes aforesaid, beyond the number of trips "herein specified.*" (P. 8, folio 12; Exhibit A, folios 9 to 12.)

At the time when this contract was made, gold had not been discovered in California; and the *principal* object of the contract was the mail service, in naval ships, between New-York, Charleston, Havana, Savannah, and New-Orleans, which required four large ships. The *minor* object of the contract was a branch mail service from Havana to Chagres, for California, and the Pacific coast, requiring one ship of not less than six hundred tons burden.

On the 3d of September, 1847, Albert G. Sloo assigned that contract to George Law, Marshall O. Roberts, and Bowes R. McIlvaine, as trustees under a deed of trust of the same date; whereby the trustees were vested with the said contract, and were to become vested with the control of the ships to be built under that contract by the parties of the second part thereto, namely, George Law, Marshall O. Roberts, Prosper M. Wetmore, and Edwin Croswell, of the city of New-York.

Under this deed of trust, the trustees were charged with the performance of the contract of Sloo with the Navy Department; and "the said Marshall O. Roberts and Edwin "Croswell were constituted joint *agents in the city of "New-York*, for the transaction of the business of the said "ships in the said city, *under the direction and control of "the said trustees.*" (Fol. 18.)

The deed of trust also contained these provisions:

"And that they (the trustees) have the sole management "and direction of the said ships, and of each of them, and of "their employment, subject, however, to the provisions of the "said contract with the Secretary of the Navy; that they ap-

"point and pay all such officers, agents, and other persons, "as they may deem necessary or proper, either for the sail- "ing or navigating of the said vessels, or for the manage- "ment of the business thereof, at the various ports or "places at which they may trade or stop, on such terms, "for such times, and with such powers and duties, as to "them may seem fit, except, however, that the said party "of the first part shall have the privilege of nominating the "commanders of the said ships, and, by and with the con- "sent of the said trustees, of appointing the same; that "they make all the necessary contracts and agreements for "the employment of the said vessels, and exercise and per- "form all such other powers and duties in the premises as "may be necessary or proper either for performing the "duties and services required by the Secretary of the "Navy, or for the profit and advantage of the parties in- "terested; and upon further trust, that they collect and "receive all the freights and earnings of the said vessels, "and all sums which shall be paid by the Government of "the United States for the transportation of the mail, or "for any other service which may be required by Gov- "ernment, and all other sums which may become due or "payable on account thereof, and make all the disburse "ments of every kind incurred in the employment of the "said vessels." (Fol. 17.)

* * * * * * *

"It is also further agreed that at the expiration of the "contract made with the Secretary of the Navy, as before "mentioned, the said trustees shall sell and dispose of the "said ships at public sale, giving at least sixty days' notice "thereof in two of the public newspapers printed in the "City of New-York, and divide the net proceeds thereof, "after defraying all the expenses of the sale and reimburs- "ing themselves all sums which may be due to them, or "for which they may be liable as trustees, or which then "may be due to the said parties of the second part between "the several parties hereto, according to their several rights "and interests therein, as hereinabove expressed; that is to "say, one half part to the said parties of the first part or

"his representatives, and the other half part to the said "parties of the second part or their representatives.

"And it is hereby further mutually agreed that the *said* "*trustees may consent to any modification of the said con-* "*tract which the Secretary of the Navy may require*, and "which in the opinion of the said trustees may be advanta- "geous to the parties of the first and second parts." (Fol. 20.)

George Law, Marshall O. Roberts, Edwin Croswell, and Prosper M. Wetmore, who were the beneficiaries under this deed of trust, on the 8th of July, 1850, conveyed their interests to the "United States Mail Steamship Co.," whereby that company stood in the place of the said beneficiaries under the deed (Exhibit D., 14).

"On or before the 23d of December, 1848, the said as- "signment by said Sloo of his said contract with the "United States was recognized by the Navy Department "and the Post-Office Department." (6th Finding, p. 63.)

As the case stood, after the United States Mail Steamship Company had been created, and had become the assignee of the rights of the original beneficiaries under the deed of trust, and when George Law was the President of that company, the situation of the various parties was this: George Law was at the same time a trustee, and, as President of the United States Mail Steamship Company, he represented one of the beneficiaries of the trust. Marshall O. Roberts was a trustee, and was the agent of the trustees for the managment of the ships under their direction. He also was an officer and stockholder of the United States Mail Steamship Company, the beneficiary; and he became President of that company after Mr. Law resigned (8th Finding, fol. 102); so that the trustees, the agent of trustees, and the officers of the beneficiary were all the same persons.

On the 21st of January, 1851, an agreement in writing was entered into between the said trustees, and the Pacific Mail Steamship Company, the United States Mail Steamship Company, Albert G. Sloo, and others, known as the Quintuple Treaty (Exhibit E., p. 49). Under this agreement,

a number of additional ships were brought in under the "possession and control of the trustees, and were alike "run by them under the trust," and all their earnings, either "from freight, passengers, or mails, during the con- "tinuance of the contract, and also the proceeds of those "sold at its close, went into the hands of the trustees as it "accrued as part of the trust fund." (Findings 3, 4, and 5, p. 70.)

The trustees were performing the contract by running the four large steamers from New-York to New-Orleans, and the small one from Havana to Chagres, when the discovery of gold in California attracted the stream of travel there; and after the purchase of the additional ships, under the Quintuple Treaty, they established a line of steamers direct between New-York and Aspinwall, for the accommodation of passengers and express freight which could not be accommodated over the contract route, and by the small vessel connecting it at Havana with Chagres. The saving of distance and of time, which this direct route effected, enabled the trustees to start their steamers on that route *two days* later than the sailing days of the steamers on the contract route; and on their return from Aspinwall, the direct steamers reached New-York two days earlier than the steamers running over the contract route. The consequence of this was that complaints were made to the Postmaster-General by merchants, whose California letters, if sent by the regular mail, were anticipated by correspondence brought by express companies using the short route; and an application was made by the Postmaster-General to George Law, who was the President of the United States Mail Steamship Company, and also one of the trustees, laying before him a letter of complaint against the then existing arrangement. In reply to that letter Mr. Law wrote as follows (Finding 11, p. 63):

"The mails for California, *via* Chagres and back, are dis- "patched by the mail steamships of this company twice "each month, on the days originally arranged with the de- "partment. Being required to go and return by way of "Havana, and to receive and discharge there the mails

"from and for New-Orleans, Charleston, etc., the passage is "usually two days longer than the direct passage to and "from Chagres and this port.

"In addition to the mail-steamers, we dispatch also, twice "a month, a steamer from this port and Chagres direct.

"These leave here usually two days later than the mail-"steamers, *via* Havana, so as to make the arrival at Chagres "at about the same time.

"Of course the return steamer, with the mail from Cha-"gres, is usually two days later in arriving here, coming "via Havana, than the steamer starting at the same time "and coming direct.

"The mail to and from Chagres will therefore be carried "with greater dispatch by the direct line, while the mails "for New-Orleans, Charleston, etc., must necessarily be "carried by the Havana route.

"*If the department desires the Chagres and California* "*mails, outward or homeward, to be sent by the direct* "*steamers, I shall be happy to direct the commanders of the* "*ships to receive them on board.*"

When this letter was written, the trustees were bound, under the Sloo contract, to carry these mails by their extra steamers, and were entitled to receive a *pro rata* compensation for their service, which compensation would have amounted to a sum almost as great as the contract price of $290,000 a year; and therefore Mr. Law, in answering the letter, expressed his readiness to carry the mails, if requested. In reply to that letter of Mr. Law, the Postmaster-General wrote as follows:

"Your letter of 25th ultimo is received, and, if under-"stood, is satisfactory.

"You say, 'If the department desires the Chagres and "'California mail, outward and homeward, to be sent by "'the direct steamers, I shall be happy to direct the com-"'manders of the ships to receive them on board.'

"We understand this to mean that you will *take mails* "*both by your steamers via Havana and by those plying be-*"*tween New-York and Chagres direct;* and of course that

"this division of the mails is to make *no difference in re-*
"*spect to the expense* of the service. Are we correct in
"this?" Fol. 103.)

This letter suggested to Mr. Law that the department was not willing to pay for the mails a *pro rata* compensation under the contract, and Mr. Law made the following reply:

"It is the intention of this company, at an early day, if
"it shall meet with the approbation of the department, to
"arrange the running of its steamers each month as fol-
"lows:

"Twice between New-York and Chagres, direct; twice
"between New-York and New-Orleans *via* Havana; and
"twice between New-Orleans and Chagres direct, making
"three distinct routes and six passages per month to and
"from the respective points of destination. Provision
"will be made for carrying the mail by each steamer, and
"to insure the arrival of the California mails at the city
"of New-York and at New-Orleans at the earliest day
" that their arrival at Chagres will enable them to be
"brought forward. We propose to make trial of this
"arrangement, and, if it proves satisfactory, to continue
"it. So long as it is in operation, the direct connection
"between Havana and Chagres may be dispensed with,
"as the Charleston and Savannah mails may be sent *via*
"New-Orleans.

"In expressing in my letter of the 25th ultimo the readi-
"ness of this company to instruct the commanders of their
"steamers, *direct as well as by the way of Havana*, to con-
"vey the California mails, if desired by the department, *it*
"*was not my intention to preclude a claim for reasonable*
"*additional compensation for such service.* Although we
"desire to meet fully the requirements of service and the
"wishes of the department, it is not expected, I presume,
'that the mails can be carried outward and homeward six
"times per month, with the necessary additional clerks or
"agents, for the same sum for which we contract to carry
"them twice monthly; still, desirous of promoting to the

" utmost the interest and convenience of the public, we are " entirely willing to perform *the additional service, in the* " *confident expectation that a sense of justice will induce* " *Congress to make such farther provision as may be con-* " *sidered a suitable compensation for it.*" (P. 64.)

In this situation, there were three courses open to the Postmaster-General: *First*, he might have proceeded under the contract; and the trustees then would have been entitled to a *pro rata* compensation; or, *secondly*, he might have proceeded under a *quantum meruit*, leaving the trustees to recover from the Government a reasonable compensation for their service; or, *thirdly*, he might have made a special contract, either for a sum certain or *for such a sum as Congress might fix.* The last of these courses he adopted; and he made the contract for such compensation as Congress might fix.

This letter of July 21st is the foundation of that contract between the parties; and it was adhered to afterwards throughout the entire service. What followed it is thus stated in the findings of the Court (pp. 64, 65):

" This letter was not received at the Post-Office Depart- " ment until July 29th, 1851.

" On the 26th of that month the Postmaster-General, by " telegraph, requested the Postmaster at New-York to see " if Mr. Law would take a mail by his steamer of the 28th " of that month, and, if so, to make it up and send it.

" On the same day, the Postmaster at New-York answer- " ed, by telegraph, that the steamer of the 28th would take " a mail for California, and that he would make up a mail " by her; and he asked to be advised if he should continue " making up mails by the direct steamers, which sailed " from New-York on the 13th and 28th of each month, " and also by the steamers *via* Havana, which sailed from " New-York on the 11th and 26th of each.

" This request he repeated in a letter dated August 7th, " 1851; in answer whereto, the Postmaster-General, on the " 8th of that month, said:

" In answer to your letter of the 7th instant, I have to

"say that you will make up and forward mails by Mr. "Law's direct steamers to Chagres, with this understand- "ing, however, that this department does not thereby be- "come responsible for any additional expense.

"On the 9th of August, 1851, Marshall O. Roberts in- "formed the Postmaster at New-York, by letter, that the "mails for Chagres, both direct and *via* Havana, would be "carried by the United States Mail Steamship Company "upon the terms and in manner therefore stated to the "Post-Office Department, namely, *compensation for any* "*extra or additional mail-service to be submitted to Con-* "*gress, without requiring a prior stipulation to pay from* "*the Department.*

"This letter was, on the day of its date, transmitted by "the Postmaster at New-York to the Postmaster-General, "with request to be advised *by telegraph, provided the lat-* "*ter wished a mail sent by the steamer Georgia*, which "was to sail on the ensuing 13th of that month.

"*On the 11th the Postmaster-General telegraphed to the* "*Postmaster at New-York, to send a mail for California* "*by the direct steamer of the 13th.*"

It thus appears that Marshall O. Roberts, one of the trustees, and the agent of the trustees for the management of the ships, *on the 9th of August*, 1851, in answer to the application of the Postmaster-General, restated the terms upon which the parties were willing to perform the service—that is, "*compensation for any extra or additional mail service,* "*to be submitted to Congress, without requiring a prior* "*stipulation to pay from the Department*" (fol. 104); and *on the 11th of August*, the Postmaster-General having this proposition before him, and being called on for a reply, telegraphed to the Postmaster at New-York to send the mail for California by the direct steamer of the 13th, *which was done.*

Here the contract was made, under which the trustees undertook to perform the service for such compensation as Congress might thereafter fix; and the Postmaster-General sent the mails by their steamers under that contract.

From February 4th to April 26th, 1852, no direct

steamers were run, because of an accident; but when the trips were resumed, "the Postmaster-General directed the "Postmaster at New-York, if the contractor should resume "the running of those steamers on the 11th and 26th of the "month for Chagres and San Francisco, to make up and "send mails by said direct steamers on said days *as here-*"*tofore under the original order.*" So that the mails were again sent under the original contract (p. 65, fol. 104; see also the Findings 11, 12, 13, 14, and 15, p. 72).

William H. Aspinwall was the President of the Pacific Mail Steamship Company, whose steamers, on the Pacific, ran in connection with the steamers of the trustees on the Atlantic, so that it was necessary to arrange the schedules with both companies; and there being a change proposed in the sailing days, a correspondence arose between Mr. Aspinwall and the Postmaster-General, in the course of which the Postmaster-General used this expression:

"Under these circumstances, I gave my assent to the "change, with the understanding of course, hitherto exist-"ing, that there was to be no additional expense for these "additional trips." (P. 65.)

What happened in consequence of this suggestion is stated in the eleventh finding of the Court on pp. 66, 67, 68, and part of 69, and in the sixteenth and seventeeth findings, p. 72. The substance of it is that Mr. Law and Mr. Roberts recurred to the letter of July 21st, 1851, as the basis of the arrangement under which they were willing that the mails should be carried by the extra steamers.

The Postmaster-General in a lette to Mr. Aspinwall had said:

"I in no way consent to any increased expense in the "matter, either by a direct allowance from the Treasury, "or by *favoring* any application which may be hereafter "made elsewhere for increased compensation." (Fol. 105.)

Which letter, although not addressed to Mr. Law, was shown him by Mr. Aspinwall; whereupon Mr. Law, sup-

posing that the Postmaster-General intended to change the basis of the contract, and to preclude the idea of any application to Congress for any additional compensation, and to set up "a distinct negative by the departments, to "which we (the trustees) became parties, upon any thing "additional that Congress may deem it just and expedient "to allow," declined by a letter of the 8th June to proceed with the service, but said that they were "prepared agree- "ably to their letter of 21st July, 1851, to carry the mail "direct."

When Mr. Law wrote this letter, "*declining to carry out* "*the arrangement* between New-York and Aspinwall "and New-Orleans and Aspinwall * * * * * "on the ground, as it is understood that the Secretary of "the Navy and Postmaster-General will not hold them- "selves liable, either directly or indirectly, for any additional "expense in the matter" (fol. 106), he had no knowledge of the tenor of a correspondence which was passing between Mr. Aspinwall and the Postmaster-General, and which led to the letters of the 12th and the 14th of June, in which the Postmaster-General disavowed the intention attributed to him by Mr. Law, and explained his position to be only that he was "not responsible, either directly or indirectly, for "any additional expense in the matter," and that he declined "to join in submitting the subject to Congress."

When this letter was shown to Mr. Law, he perceived the misunderstanding, and on the 16th of June wrote to the Postmaster-General that "*upon the basis of* "*my letter of yesterday* (15th) which seems to be in accord- "ance with the reply of the Department to Mr. Aspinwall "of the 14th inst., we are prepared to enter upon it at once, "and try it in accordance with *the enclosed schedule.*"

The "*letter of yesterday*" referred to had declined to perform the service, if the understanding were that there was to be no application to Congress for compensation, but standing upon the letter of 21st July, 1851, which it quoted, offered to proceed upon that "basis."

This letter of the 16th was crossed on the way by an order from the Postmaster-General of the same day (the 16th) in-

structing the Postmaster at New-York *not* to send any mails by the direct steamer to leave on the 20th of that month, unless the contractors "should give assurance that "they would go through without delay and without *addi-* "*tional expense to the department.*" On the 18th of June, the Postmaster-General replied to Mr. Law's letters of the 15th and 16th as follows:

"In reply, I have to say, that, so far as this Department "was concerned, and the same we have no doubt is true of "the Navy Department, it was not the intention to hold "your company to the proposed arrangement, after a fair "trial, should the change be found to operate disadvantage- "ously to either party. It is, therefore, understood that, "should it be found to the interest either of the Company "or the Government to return to their existing arrange- "ment, this may be done, as you propose, on a month's "notice by one party to the other; and the change "may take effect from and after the 5th of next month" (p. 69).

On the 17th of June, Mr. Aspinwall, having seen Mr. Law, wrote as follows to the Postmaster-General:

"SIR: I have seen Mr. Law since receiving your letter "of the 14th instant, and find, as I expected, that he mis- "understood your previous letter. I hope that after re- "ceiving his letter, which went forward by the last mail, "there will be no obstacle in the way of our making a "good beginning, on the 5th of July, of the new arrange- "ment.

"In answer to the closing inquiry in your letter, I beg "leave to suggest that as this arrangement is to be con- "tinuous only in case it is successful, no appeal could be "properly made to Congress until the experiment has been "tried" (p. 72).

And on the 18th, Mr. Roberts wrote as follows to the same officer, which letter was not sent till the 19th:

"SIR: In relation to the direct steamer of the 21st, I "presume that our correspondence and that of Mr. Aspin-

"wall with the Department (not received at the Depart-
"ment when Mr. Dundas's letter was written) was satis-
"factory, and that the contemplated arrangement for
"direct mails between New-York and Aspinwall, and
"New-Orleans and Aspinwall, will go into early effect"
(p. 72).

These letters cleared up the confusion which had arisen from the fact that two separate parties—that is, Mr. Aspinwall and the trustees—were corresponding with the Department in regard to the same subject; and on the 24th of June the Postmaster-General wrote to Mr. Law, adopting the schedules for both routes, which Mr. Law had enclosed in his letter of the 16th, as follows (p. 69):

"The schedule proposed for the *direct line between New-*
" *York and Aspinwall*, and New-Orleans and Aspinwall,
"and the line between New-York and New-Orleans *via*
"Havana, has been adopted to go into effect on the 5th day
"of July next."

The Postmaster-General, acting probably under the reasonable suggestion of Mr. Aspinwall, did not refer the matter to Congress, as he had proposed to do; and the trustees went on performing the service under the arrangement by which they were to go to Congress for pay after it had been performed.

From that time until the 20th of September, 1859, the mails were regularly sent by the direct steamers—the contract steamers also running to New-Orleans; and from July 1852 to September 1854, a direct steamer was run from New-Orleans to Aspinwall, twice a month, without touching at Havana—which steamer, however, superseded the small steamer from Havana. This extra steamer was discontinued at the end of two years, as shown in the 18th, 19th, and 20th Findings (p. 73); and no claim was made against the Government for her service, because of failure of proof as to the weight of mails that were carried by that line. (Finding 22, p. 74.)

As to the contract service, the Court finds that—"9. The

"contract between said Sloo and the United States was per-
"formed by the trustees, and all transactions thereunder
"have been closed, and all accounts connected therewith
"settled, and all moneys due in relation thereto paid by
"the United States to said trustees." (Fol. 102.)

After the performance of this extra service, the trustees applied to Congress, in accordance with the terms of the agreement under which they performed it, for compensation; and Congress passed the following act:

"Be it enacted by the Senate and House of Representa-
"tives of the United States of America in Congress assem-
"bled, that the claim of the trustees of Albert G. Sloo, for
"compensation for services in carrying the United States
"mails by steamers direct between New-York and Chagres,
"and New-Orleans and Chagres, in addition to the regular
"service required under the contract made between the
"said Albert G. Sloo and the United States, be and the
"same is hereby referred to the Court of Claims, and the
"said Court is hereby directed to examine the same, and
"determine and adjudge whether any, and, if any, what
"amount is due said trustees for said extra service; provid-
"ed *that the amount to be awarded by said Court shall be*
"upon the basis of the value of carrying other first-class
"freight of like quantity with the mails actually carried
"between the same ports at the same time."
"Approved July 14th, 1870." (P. 21.)

A suit had been begun March 2d, 1866, in the Court of Claims, by the trustees, who at that time were Marshall O. Roberts, Horace F. Clark, and Edward N. Dickerson—the latter two having taken the places of George Law and Bowes R. McIlvaine—so that this act was in aid of a pending suit.

Upon the trial of this suit, the Court of Claims, being equally divided, gave no opinion, but rendered a judgment *pro forma* for the Government; so that we do not know upon what ground two of the four judges supposed that the petitioners were not entitled to recover (p. 69, § 15).

## POINTS.

Upon the state of facts, found by the Court, the appellants are entitled to a judgment upon one of three distinct grounds.

1. An express contract with the Government under which they performed the service; or—

2. An implied contract, under which they are entitled to compensation, *quantum meruit;* or—

3. The Act of Congress, which entitles them to compensation at the rate therein fixed, provided they did perform the service.

### I. The Express Contract.

This contract is in writing, and is expressed in the letter of July 21st, 1851 (fol. 103), and again in the letter of the 9th of August, 1851 (fol. 104), in which Mr. Law and Mr. Roberts proposed to carry the mail for such compensation as Congress might give, and in the telegram of the Postmaster-General to the Postmaster of New-York of the 11th of August, in answer to Mr. Roberts' letter, ordering the Postmaster to send the mails by the direct steamer of the 13th, which was done. This contract thus made was never departed from during the continuance of the service; but, on the contrary, was renewed at least twice: *first*, when the Postmaster-General, on the 26th of April, 1852, ordered the mails to be sent by the direct steamers "*under the original order;*" and *again* when Mr. Law declined to carry the mails under what he supposed to be an interpretation of the contract by the Postmaster-General, which would exclude the trustees from compensation by Congress, when the Postmaster-General ordered the mails sent under Mr. Law's and Mr. Roberts' letters, restating their letter of the 21st of July, 1851, as the only basis upon which they would consent to carry the mails.

The effect of this contract was, that the parties to it agreed that the mails should be carried for such compensation as Congress might fix—the Postmaster-General, on his part, being relieved from any obligation to pay for the service out of the Post-Office appropriation, and the contractors, on their part, relying upon the compensation which Congress might award.

If a similar contract had been made between private persons, submitting it to a third person to fix the compensation, that would have been a valid contract; and if the third person had refused to fix the price, an action could have been maintained *quantum meruit.*

In this case, however, Congress has fixed the measure of compensation, and referred the claimants to the Court of Claims to prove that they performed some service, and the extent of the service thus performed; which, having done, they are entitled to be paid according to the price thus established.

## II. An Implied Contract.

If, however, there were no express contract between the parties, then the appellants would be entitled to compensation, *quantum meruit*, in the absence of any act of Congress fixing the rate of compensation. They have done the service at the request of the Government, and for the benefit of the Government, and are therefore entitled to be paid; but Congress having fixed the measure, they are entitled to be paid according to that standard.

The presumption of law is that the service was not rendered gratuitously, and therefore no proof is needed to show that it was expected to be paid for; but in this case the trustees took special pains to exclude the idea that the service was to be done without compensation, and actually refused to go on with it when a misunderstanding arose between them and the Postmaster-General, under which it might possibly be inferred that he took that view of it. It would require strong proof to establish the proposition that these trustees, who were running the regular mail service

all the time to New-Orleans, undertook to carry gratuitously thirty tons of mail matter by ships that were then overcrowded by the rush of California travel, and in which the express freight demanded all the room they had; and there is no such proof, nor any such finding by the Court.

## III.—The Act of Congress.

But Congress has decided the whole question by the Act of July 14th, 1870. This act is complete in itself. It states the claim to be "for *compensation for services* in carrying the United States mails by steamers direct between "New-York and Chagres, and New-Orleans and Chagres, "*in addition to the regular service;*" and it refers that claim to the Court of Claims to "determine and adjudge "*whether any, and, if any, what* amount is due said trus- "tees *for said extra service;* provided that the amount *to* "*be awarded by said Court* shall be upon the basis of the "value of carrying other first-class freight of like quantity "with the mails actually carried between the same ports at "the same time."

The words in this act, "*whether any, and if any,*" if struck out, would leave the act with the same force and effect as it now has. The Court of Claims would then be directed to "determine and adjudge *what* amount is due "said trustees for said extra service." In that form the same questions would be open as in the present form of the act. The petitioners must prove, in either case, that they did perform *some* service, and its extent. In either case, they must fail if they do not prove some service and its extent. And, in either case, having proved the performance of some service, and the extent of it, they would be entitled to compensation at the rate fixed by the act.

If the trustees had never exchanged a word with the Postmaster-General, but had simply received and transported the mails sent to their ships from the Post-Office, they would be entitled to recover under the act; for they would have performed a service for the Government the benefit of which had been taken by the Government, and for which

Congress had fixed the rate of compensation. The law would not object the want of an express contract when an implied one existed, and when Congress had acknowledged the claim, and fixed the measure of compensation. How, then, can it be said that the correspondence on the subject deprives the trustees of a right which they would have had if they had kept silent? Certainly they never agreed to do the service without compensation, but carefully preserved their right to demand compensation of the United States represented by Congress; and nothing but an express contract to the contrary, made since the act was passed, can deprive them of the benefit of a recovery under it.

The argument addressed by the then Assistant Attorney-General, to the Court of Claims, amounted to this—that the act should be read as if it had a proviso that, unless the trustees were entitled to recover *without the aid of the act*, it should have no force or effect.

As we understand it, the act supplies the measure of compensation to the express contract, and was so intended; but if there be no express contract, and the appellants stand upon a *quantum meruit*, then it fixes the compensation for that. And if it were possible to say that the trustees had undertaken to perform the service without compensation, the act releases them of that undertaking, and entitles them to recover at the rate specified.

The act is "for the relief of the trustees." If the trustees had had a perfect case under the general law which created the Court of Claims, so that there could be no question about their right to recover when they proved service, this private act would be simply nugatory. Their difficulty was, however, that they were under an express contract, which required Congress to fix the price; and until Congress acted, or refused to act, the Court of Claims could not apply the *quantum meruit* to the contract. Congress did act, and thus relieved the case from the difficulty it encountered in the Court, and enabled the appellants to proceed, and to recover, upon proving that they had performed the service which the act contemplates. Any technical objection to the form of the contract, or to the proceeding under which

the service was done, is remedied by this act; the theory of which is that, if the service had been rendered, it should be compensated, whatever objection might have existed to the manner and form in which the contract was made.

Congress might have ascertained whether the trustees did perform the service, and how much they performed; but those questions were better tried in a court, and Congress submitted them to the Court of Claims. The Court of Claims has ascertained the facts thus submitted; and the conclusion of law should be that the appellants are entitled to a judgment according to the measure of compensation fixed by the act.

SECOND.

The Court erred in rendering a judgment *pro forma* against the appellants, and in favor of the United States. The judgment should be reversed.

THOMAS WILSON,
*Counsel for Appellants.*

# In the Supreme Court of the United States.

OCTOBER TERM, 1875.

MARSHALL O. ROBERTS AND OTHERS, appellants,
*vs.*
THE UNITED STATES.
} No. 539.

APPEAL FROM THE COURT OF CLAIMS.

*Brief for the United States.*

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APPEAL FROM THE COURT OF CLAIMS.

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An outline of the facts found by the Court of Claims in this case is:

That in 1847, under an act of Congress, (9 Stat., 187, ch. 62. sec. 4,) the Secretary of the Navy contracted with one Albert G. Sloo for a semi-monthly mail-service in certain steam-vessels betwixt New York and New Orleans, touching at Charleston, (if practicable,) Savannah, and Havana; and from Havana to Chagres, and back:

This contract with the United States, by subsequent assignments, became the property of the appellants:

In 1851 the assignees of Sloo, after negotiations set on foot by a note from the Postmaster General, proposed, in lieu of the above, *as an experiment*, to carry mails be-

tween the above points, during every month, as follows: Twice between New York and Chagres, direct; twice between New York and New Orleans via Havana; and twice between New Orleans and Chagres, direct. In respect to the consideration to be paid for such service, (and in reply to a notification previously in such negotiation given by the Postmaster General, that the new arrangement should make "*no difference in respect to the expense of the service,*") the assignees said, that although the additional service could not be performed for the money for which the original contract was made, "still, desirous of promoting to the utmost the interest and convenience of the public, we are entirely willing to perform the additional service in the confident expectation that a sense of justice will induce Congress to make such further provision as may be considered a suitable compensation for it:"

Under this suggestion, which a correspondence between the parties in 1852 ascertained to mean, amongst other things, (eleventh finding of facts, Record, folios 102, &c.,) that the Post Office Department was expected *to take no part, either for or against such application*, the service was done for which this suit has been brought.

The act of Congress under which the above *contract* was made is that of 1847, ch. 62, sec. 4; as follows:

SEC. 4. *And be it further enacted*, That from and immediately after the passage of this act, it shall be the duty of the Secretary of the Navy to contract, on the part of the Government of the United States, with A. G. Sloo, of Cincinnati, for the transportation of the United States mail from New York to New Orleans, twice a month and back, touching at Charleston, (if practicable,) Savannah, and Havana; and from Havana to Chagres and back, twice a month. The said mail to be transported in at least five steamships of not

less than fifteen hundred tons burden, and propelled by engines of not less than one thousand horse-power each, to be constructed under the superintendence and direction of a naval constructor in the employ of the Navy Department, and to be so constructed as to render them convertible, at the least possible expense, into war-steamers of the first class; and that the said steamships shall be commanded by officers of the United States Navy not below the grade of lieutenant, who shall be selected by the contractor, with the approval and consent of the Secretary of the Navy, and who shall be suitably accommodated without charge to the Government. Each of said steamers shall receive on board four passed midshipmen of the United States Navy, who shall serve as watch-officers, and be suitably accommodated without charge to the Government; and each of the said steamers shall also receive on board and accommodate, without charge to the Government, one agent, to be appointed by the Postmaster-General, who shall have charge of the mails to be transported in said steamers: *Provided*, The Secretary of the Navy may, at his discretion, permit a steamer of not less than six hundred tons burden, and engines in proportion, to be employed in the mail-service herein provided for between Havana and Chagres: *Provided further*, That the compensation for said service shall not exceed the sum of two hundred and ninety thousand dollars, and that good and sufficient security be required for the faithful fulfillment of the stipulations of the contract.

By the corresponding *contract* with Sloo, it was provided, amongst other things, as follows:

And it is further agreed by and between the parties aforesaid, that on tender of compensation by the said Government of the United States, not exceeding a due proportion of the pay herein stipulated, the said A. G. Sloo, contractor, shall convey any mail or mails of the said United States which he may be required to convey on any steamship which he, the said Sloo, may own, run, or control on the routes aforesaid beyond the number of trips herein specified. (Record, folio 60.)

This provision is regarded by the claimants as important to their present contention.

Upon application by the appellants to Congress for

the relief suggested above, the following private act was passed, entitled "An act for the relief of the trustees of Albert G. Sloo:"

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the claim of Albert G. Sloo, for compensation for services in carrying the United States mails by steamers direct between New York and Chagres and New Orleans and Chagres, in addition to the regular service required under the contract made between the said Albert G. Sloo and the United States, be, and the same is hereby, referred to the Court of Claims, and the said court is hereby directed to examine the same, and determine and adjudge whether any, and, if any, what, amount is due said trustees for said extra service: *Provided,* That the amount to be awarded by said court shall be upon the basis of the value of carrying other first-class freight of like quantity with the mails actually carried between the same ports at the same time.

Approved July 14, 1870. (16 Stat., 655.)

The petition in this cause was filed originally on the 2d of March, 1866, but was amended, by the substitution of a new petition, on the 4th of November, 1874.

By the findings of the court it appears that all claim for carrying the mail directly between New Orleans and Chagres has been expressly abandoned; and that, for carrying the mail directly between New York and Chagres, the plaintiffs are entitled, if at all, to more than one million dollars.

It is also found by the Court of Claims that the United States have fully performed their part of the contract of 1847 with Sloo.

We submit to the consideration of the court the following propositions:

1. Under the state of things existing before the passage of the act of July 14, 1870, the claimants had no rights that could be enforced in a court of justice.

2. The act of July 14, 1870, refers to the Court of Claims only such rights as the claimants had previous to its passage.

3. It is contrary to fundamental rules governing proceedings in courts of justice to allow rights originating subsequent to the inception of a suit to be litigated in such suit. Therefore rights accruing to the plaintiffs under the above act of Congress of 1870 can be tested only by a suit brought after such time of enactment, and cannot be brought in to support an action already pending.

We will discuss the above propositions *seriatim*.

I. Under the state of things existing before the passage of the act of July 14, 1870, the claimants had no rights that could be enforced in a court of justice.

Under the act of 1847 the Secretary of the Navy was empowered to bind the United States by a contract to pay for the transportation of the mails over a defined route: *i. e., from New York to New Orleans, touching at Charleston, (if practicable,) Savannah, and Havana, and also from Havana to Chagres.*

Under this authority he had no power to contract for such transportation *directly* from New York to Chagres, *i. e.*, over the only route for which payment is here demanded.

It is suggested in the brief of the plaintiffs (p. 6) that the clause in the contract of 1847, by which Sloo was to be paid ratably beyond the sum agreed upon, *for extra transportation of mails over the route*, of itself authorizes the plaintiffs to demand payment for the service now in question, leaving, under their agreement with the Postmaster-General, for decision by Congress, only the amount of such compensation.

*But the transportation now in question was not over the same routes*, ("the routes aforesaid,") although between the same termini. A fair test of the right of the plaintiffs to claim payment under the above clause may be applied by considering whether they had a right thereunder to perform *all* the transportation contracted for (*original and extra*) by such substituted route. If the plaintiffs had no right to substitute, *of their own will*, the direct line from New York to Chagres in place of the two *partial* routes which, by the act of 1847, conducted the mails between those points, it was because the latter was a *different route* from the former. This consideration applies as well to exclude the above clause from operating as is suggested for the *extra* service. The *extra* service stipulated for was to be over the *same route; this* "additional service" was not.

It seems evident, also, that this suggestion as to the extent of the above clause is an *after-thought* not entertained by the parties to the correspondence given in the eleventh finding, *i. e.*, that correspondence which authorized the service now in question. In that correspondence the plaintiffs over and again *disclaimed* any right under the proposed arrangement, except of making suit to Congress for such relief as it might think proper. The position taken by the plaintiffs as to such additional service is well expressed by them in the following passage, amongst others, (Record, folio 107:)

> While it has not been the intention of this company to hold either of the Departments liable, directly or indirectly, for any additional mail-service beyond the conditions of the contract, but to perform it subject entirely to the decision of Congress, I desire respectfully to say that I do not feel authorized to place the company in a position that would preclude it from applying for or accepting such additional allowance as, in the judgment of Congress, might be considered equitable.

Moreover, if the rights of the plaintiffs arise under the contract in any way whatever, directly or indirectly, they are barred by the ninth finding of the Court of Claims, viz :

> The contract between said Sloo and the United States was performed by the trustees, and all transactions thereunder have been closed, and all accounts connected therewith settled, and all moneys due in relation thereto paid by the United States to said trustees.

II. The act of July 14, 1870, refers to the Court of Claims only such rights as the claimants had previous to its passage.

After about *eleven* weary years of application to Congress, the plaintiffs *procured* the passage of the above act of 1870, which refers to the Court of Claims the question raised before the legislature, *i. e.*, whether they are entitled to *any*, and, if so, *what*, compensation for their additional service.

The learned counsel for the plaintiffs in discussing that act suggests that the expression "*Whether any, and, if any,*" might as well be stricken out. Whilst we admit that it were not only as well but far better *for his cause*, so to amend the act, yet we know of no rule of construction which will justify such emasculation. The suggestion shows that, if the counsel understood each other, they probably agee that what the plaintiffs stand in need of is *legislation*, and that, as their cause now is, a *court* cannot recognize it. This *legislation* the plaintiffs seek *here*, by asking the court to amend the act of 1870! We admit that for their purposes the act needs the very amendment which they suggest. But, of course, it cannot be had in the way desired. *Evidently, the plaintiffs must go back to Congress.*

The question submitted by Congress to the court is one of the very questions that arose before it upon the application of the plaintiffs. Congress evidently declined to make an appropriation for the plaintiffs, or to put their claim upon any higher ground than it then occupied, but was willing that their legal rights, whatever they were, should be passed upon by the court; or rather, as seems to us most probable, the plaintiffs, after failing in their real object in applying to Congress, adopted a *pis aller*, out of which, *by construction*, possibly something might be made, and which at all events *looked like relief*.

It cannot be forgotten that the act is a *private act*, procured by the plaintiffs, and therefore that all doubts arising thereupon are to be resolved against such procurers. It tenders a mere phantom of relief, accepted by the plaintiffs probably as *better than nothing* at the close of a long, irksome, and desperate struggle for a substantial remedy. It has however plainly conducted them to an exit upon the same side of the fence.

In 1851, upon deliberation, they placed themselves *outside of all contract with the United States*, and entered upon the performance of a certain service, compensation for which they admitted could only be had from Congress.

What they referred to the good will of Congress was not only the *rate* but the *fact* of compensation. In order to create that *tie* betwixt them and the United States which would justify a consideration of the *rate* of compensation, *legislation* was necessary.

If such legislation was not necessary from the nature of such cases in general, it was from the special features of this case, in which the representatives of the Government expressly and repeatedly declined to make any

contract, and the plaintiffs expressly and repeatedly referred their claims to the sovereign will of Congress.

If the plaintiffs had intended, by the act of 1870, to obtain from Congress a sanction of their "additional service," and a reference to the Court of Claims of no more than the question as to the rate of compensation, words to express such purpose could easily have been found.

The act of 1870 contains no such words, but leaves the question of this obligation of the United States where it found it. The rights of the plaintiffs are still rights of a suit to *a tribunal that can legislate.* It is still true that Congress alone can supply the defect existing in their title to compensation.

III. It is contrary to fundamental rules governing proceedings in courts of justice to allow rights originating subsequent to the inception of a suit to be litigated in such suit. Therefore rights accruing to the plaintiffs under the above act of Congress of 1870 can be tested only by a suit brought after such time of enactment, and cannot be brought in to support an action already pending.

The act of 1870 does not give the Court of Claims power to consider this matter in the suit then pending. Whatever right was thereby conferred was to be administered by the court *according to its course,* which course does not admit that an *action shall precede its cause.* Upon the record, then, the plaintiffs seek to support an action *begun in* 1866 by a cause of action *arising in* 1870. By fundamental principles common to all courts, this cannot be done. Omission by the counsel for the United States below to object to the amendment of the petition in 1874 does not preclude criticism of its effect after it has been allowed. When the amendment had been

made, it *related* back to the time when the original petition was filed. A *declaration* "since the last continuance" (Record folio 32) is unknown to pleading. We have here, then, after all, a petition *filed virtually in* 1866, upon a cause of action *given first in* 1870.

We, therefore, submit that the right of the plaintiffs to recover of the United States in this suit must rest upon the condition of things existing at the time of its institution.

S. F. PHILLIPS,
*Solicitor-General.*

Supreme Court of the United States.

OCTOBER TERM, A. D. 1875.

*No. 539.*

MARSHALL O. ROBERTS ET ALS., APPELLANTS,

*vs.*

THE UNITED STATES.

*Rejoinder of the Appellants to the Brief of the Solicitor General for the United States.*

THE FACTS.

*First.* The Solicitor General errs in his statement, on his first page, that the service for which compensation is sought in this suit was "*in lieu of*" the service provided for by the contract between the Secretary of the Navy and A. G. Sloo. That service was performed, at all times, by the ships running between New York and New Orleans, touching at intermediate ports, and between Havana and Aspinwall, (except that for a short period of time the ships which should have run between Havana and Aspinwall did, in fact, run between New Orleans and Aspinwall, over a longer route, and at a loss to the claimants of about $200,000, for which no compensation is asked here, because of failure of proof as to the quantity of mails carried.) (Page 74, Finding of Facts, par. 20.)

As already shown, the New York and New Orleans ser-

vice was the great object of the Sloo contract,—the Aspinwall (or Chagres) ship being small, and not expected to carry large mails or many passengers—and that service never was suspended, but was performed and paid for under the contract.

The service now in question was entirely an *extra and additional service*, in the performance of which another fleet of ships was engaged, leaving New York two days later than the contract ships, and reaching Aspinwall at the same time, and leaving Aspinwall at the same time as the contract ships, but reaching New York two days earlier. (Finding of Facts, par. 9 and 10, p. 63.)

*Second.* The statement of the facts by the Solicitor General is, otherwise, substantially correct:—that is, the appellants agreed with the Postmaster General to perform this extra and additional service for such compensation as Congress, on the application of the claimants, might fix—the Postmaster General "to take no part either for or against the application;" and Congress did pass the act of July 14, 1870.

## THE LAW.

I. The Solicitor General lays down this proposition:

"Under the state of things existing before the passage of the act of July 14, 1870, the claimants had no rights which could be enforced in a court of justice."

The first reason for this statement, assigned by the Solicitor General, is that the extra service was not performed "over the same routes * * * although between the same termini" as the contract service, and therefore the "*Secretary of the Navy*" could not contract for any additional compensation for that service.

The answer is that we do not claim under *any* contract with the "Secretary of the Navy;" nor yet under any con-

tract made with *any one* by virtue of that clause of the Sloo contract cited by the Solicitor General, (p. 3.) That clause bound the *contractor*, and the claimants as his assigns, at the option of the Government, to carry the mails on any extra ships they might own, run, or control, "on tender of (*pro rata*) compensation by the said Government of the United States."

The United States did not avail itself of that clause, as it might of done, probably because of the expense, which would have been nearly as great as the original contract price. This clause of the Sloo contract was cited by us in our brief, only to show that the state of things which occurred in 1851 was foreseen at the date of the original contract; and that the United States, in the present arrangement, have made a much more favorable bargain for the extra service than if it had carried out that which was originally contemplated between the parties.

If, however, the extra service had been done under that clause of the contract, it could not have been held unlawful, merely because some of the intermediate ports were dropped out of the route, so long as the objective points were the same. That change would not have made it a new route. But in fact Congress provided for shortening the route between New York and Aspinwall, by dropping out intermediate ports, and thereby authorized the establishment of the direct line, in the act of March 2d, 1851, sec. 1, (9 Stat., 623,) in the following words:

"That the Secretary of the Navy and the Postmaster General be authorized, by and with the *consent of the contracting parties* respectively, to rearrange the running of the United States mail steamships, so as to afford more direct dispatch between the ports of the United States and the isthmus of Panama."

The ships referred to in this act were the ships controlled by the claimants; and the object of the act was to shorten their time between New York and Aspinwall by dropping out intermediate ports, which was done.

As is correctly stated by the Solicitor General we make no claim for any portion of the compensation provided for in the original Sloo contract; that contract was only the stem upon which our contract for extra service was grafted.

Our present claim is based upon the agreement made with the Postmaster General, as the same is found by the Court of Claims and admitted by the Solicitor General in his brief, supplemented by the act of Congress. And the question for this Court to determine is, what are the rights of the claimants under that agreement and that act.

When the Postmaster General opened the negotiation, he was authorized to bind the Government by any contract he might choose to make for this ocean service, for a period not exceeding ten years, (act March 3, 1845, sec. 1, Brightly, p. 773;) and, so far as his acts were concerned, the only question is whether he made any agreement with the claimants. If he did, then he bound the United States; although it is true enough that the rights acquired by the claimants could not be enforced in a court of justice, *at that time*, simply because the United States could not be sued, but for no other reason. The contract was specific, and was that the claimants would perform the service as requested by the Postmaster General, and "compensation for any extra or additional mail service to be submitted to Congress without requiring a prior stipulation to pay from the Department." (Letter of August 9, 1851, Record, p. 65, fol. 104.) These terms were a *resumé* by the claimants of their letter of July 21, 1851, which was in these words: "we are entirely willing to perform the additional service in the confident expectation that a sense of justice will induce Congress to make such further provision as may be considered a suitable compensation for it," (Record, p. 64;) and under these offers the Postmaster General ordered the mails to be carried, and they were carried at great cost to the contractors.

The paragraph cited in the brief of the Solicitor General

is from a letter of the claimants written in 1852, a year after the contract had gone into operation. It was written in answer to one from the Postmaster General, from which the claimants supposed an attempt was to be made to change the basis laid down by the agreement of August, 1851, and, upon that supposition they refused to go on with the service.

The utmost that can be argued for the Government is that the claimants were bound to procure from Congress "such further provision as may be considered a suitable compensation" for the service; but it cannot be doubted that the United States was bound by the contract whenever that was done.

The substance of the contract was, that when the service was done, the United States itself, by its act of Congress, should fix the compensation. Congress might have fixed it at one dollar, and the claimants would have been concluded; but if Congress had refused to act at all, after the service had been done, then an action *quantum meruit* could have been maintained, because the refusal would have been the wrongful act of one of the parties to the contract, and a recovery could have been had in a court of law, if the United States could have been sued.

It is not material, however, to determine what would have been the situation of the parties if Congress had not acted.

II. The Solicitor General makes the following point: "The act of 14th July, 1870, refers to the Court of Claims *only* such rights as the claimants had previous to its passage."

To support this proposition it is asserted that the Postmaster General "declined to make any contract." This is a fallacy. The contract he did make in behalf of the Government was that the claimants should do the service for such compensation as Congress might fix, which was a valid contract. The act of Congress, by its proviso, does fix the measure of compensation, and then refers the whole case to the

Court of Claims to determine whether there was such a service rendered as that the claimants are entitled to recover according to that measure. If the contract were in abeyance until Congress supplied the measure of compensation, the act certainly completed the contract; and it "refers to the Court of Claims" not only "such rights as the claimants had previous to its passage," but also such additional right as the act conferred upon them, namely, the right to recover, if at all, "upon the basis of the value of carrying other first class freights of like quantity."

The argument of the Solicitor General is the same as that addressed to the court below, and referred to and answered in our original brief, namely—"that the act should be read as if it had a proviso, that unless the trustees were entitled to recover *without the aid of the act*, it should have no force or effect;" and its fallacy consists in assuming that the act is simply nugatory, which cannot be assumed, but must be proved. The presumption is that the law is operative, and it must be so construed as to give it effect, if possible.

The Solicitor General says that "what they (the claimants) referred to the good will of Congress was not only the *rate*, but the *fact* of compensation." In some sense this is true; because Congress might have said when it acted upon the submission that, in its judgment, the claimants were entitled to no compensation. That was a risk which the claimants took when they made their contract; and is just such a risk as is very often taken by those who agree to perform a service for such compensation as a third person may fix. But if it is meant (as we suppose it is) that when Congress fixed the *rate* of compensation the claimants had yet no right to recover, because Congress had not declared in express terms such a right to exist, then we differ entirely from the learned counsel. The right to recover never did depend upon the will of Congress, either to confer it or take it away. That depends upon the principles of

the law of contracts, under which the claimants are entitled to recover because they have done a service at the request of the Government, and for the benefit of the Government. Congress had no other connection with this contract than that which the contracting parties chose to give it by agreeing to refer to it the question of compensation. When Congress acted upon that question it did all that it had any right to do in the matter, so far as the nature of the claim is concerned. It referred the other questions to the Court of Claims, after fixing the compensation, without in any degree impairing the right of the claimants to recover for the services rendered. So far as the act goes, it strengthens the claim. It certainly does not weaken it. This Court must determine the legal effect of the acts done by the respective parties; and its power and duty to do so are not impaired, to say the least of it, by the circumstance that Congress has referred the question here for determination.

The argument of the Solicitor General, however, is that before we can recover, there must be legislation expressly declaring that we may recover. Our argument is that our right to recover is antecedent to, and independent of, any legislation, except that which gave the Postmaster General the right to bind the Government by procuring mail service to be done, and that which supplemented the contract he made with the claimants, by fixing the rate of compensation, which rate was agreed to be submitted to Congress.

It is an error to say that the claimants "expressly and repeatedly referred their *claims* to the sovereign will of Congress." What they referred to Congress was the question of compensation. Congress might then have acted upon the claim, and decided it, or it might have referred it to the courts; but it cannot be contended that the reference to the courts of the right to recover under the contract for the service rendered, places the claimants in any worse position than they would have been in if the Postmaster General

and the claimants had fixed the rate of compensation, instead of leaving it to Congress to be fixed.

But whatever may be the true construction of the agreement between the claimants and the Postmaster General, one thing is certainly true, which is that the claimants did not undertake the service without the expectation of compensation; but, on the contrary, declined to carry the mails when there was any doubt raised about compensation. It is also apparent that compensation at the same rate as that paid for freight, is as little as they would have accepted if the terms had been fixed in 1851, or as the Postmaster General could have expected to pay for mails—because the mails displaced just that much freight—so that the service has been had at a very cheap rate if paid for as freight at the end of so many "*weary years* of application to Congress"—as the Solicitor General very justly styles the unjust delays to which the claimants have been subjected. And we submit, as we did in our original brief, that the act of Congress remedies all the technical defects and difficulties arising from the nature of the arrangement under which the claimants agreed to wait on Congress till the service was done; and that it leaves open no questions, except 1st, whether the claimants did, in fact, perform the service for which they made claim to Congress; 2d, how many pounds of mails they did carry; and, 3d, what amount is due for the service at the rate fixed by the act. The Court of Claims has settled these questions in our favor; and there is no pretence by the Government, either that the claimants ought not to be paid, or that they ever gave up their claim for compensation. The objection is simply that Congress has not "sanctioned" *the service* in express terms, and therefore that this Court ought not to give effect to a lawful agreement under which it was done, and which agreement Congress has "sanctioned" by fixing the rate of compensation to be paid under it. The Solicitor General says that we need more legislation, in order to "supply the defect existing in our

title to compensation." There is no such defect. The best title to compensation is work and labor done at the request of the defendant. The only defect that ever existed was that one which Congress remedied when it fixed the rate of compensation.

In our original brief we said that the words "whether any, and if any" in the act of 1870 did not alter the sense of that act. The Solicitor General thinks he finds in them a fatal distinction against our case. Those words relate solely to the words "what *amount* is due said trustees for said extra service;" and they suggest only whether "*any amount* is due for said extra service." The claimants may have been paid in whole or in part, or they may have claimed of Congress too much in quantity. In the one case, nothing would have been due; and in the other, less than claimed. These questions of fact were properly referred to the court for trial; but it certainly was not the intention of those words of the act that the claimants should not be paid for what services had been rendered the Government. The words "what amount is due," if standing alone, mean "what, *if any*, amount is due;" and they are not affected by the actual use of the understood words which express the full meaning.

*Resumé.*

The argument of the Solicitor General contained in his first two points is substantially this: 1st. That before the act of 1870 the claimants could not recover for their services under their agreement with the Postmaster General, because that agreement was incomplete until Congress had fixed the compensation; and, 2d, The act of 1870 did not relieve the claimants from their difficulty, because it did not enact "a *sanction* of their additional service."

Our answer is that, as to the first point, it is immaterial whether the claimants could recover or not without the aid of the act of 1870; but that, having performed the service,

they might have recovered, *quantum meruit*, if Congress had refused to act on the submission of the question to it, when requested by them to do so—Congress representing one of the parties to the agreement. And, as to the second point, we say that the act of 1870 has done all that is required to afford a remedy under the contract; and that the reference to the Court of Claims by that act carries with it the ascertained measure of compensation by Congress, thereby supplying all the elements of a perfected contract. There is no need of a "*sanction of their additional service*" by Congress as is supposed. That service was done at the request of the Postmaster General, who was competent to contract for it, and to bind the United States by his contract.

It is an error to say that the act of 1870 is to be "resolved" against the claimants. The act is a "remedial" one, and must be construed liberally, to give effect to the intention of the legislature. What that intention was is very plain. Congress meant that if the service had been done, it should be paid for, and the act fixed the rate—not as a maximum, but absolutely. The proviso is "that the amount *to be awarded by said court shall be* upon the basis," &c.

III. The Solicitor General also contends that the act of 1870 ought not to have been set up in a pending suit in the Court of Claims in aid of that suit, but that a new suit should have been begun when that act was passed. This is a question of practice, and as no objection was ever made to the proceedings till the case is on appeal here, it is too late now to make it.

But there is no sound objection to the course pursued. A petition was pending in the Court of Claims when the act in aid of it was passed. If the original petition could not be maintained, then the act vitalized it; if it could be, then the act, so far, was immaterial. In either case, it was proper to be introduced into the suit, because it *purported*

to give a remedy of the same kind which was being sought in the suit, and was, therefore, in aid of the suit.

But we do not understand the Solicitor General to ask this Court to strike out the pleadings; and we submit that his criticism should have been made in the court below, where, if it were well founded, some action might have insued from it.

THOMAS WILSON,
*Counsel for Appellants.*

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1876

Jud Davis

Parker

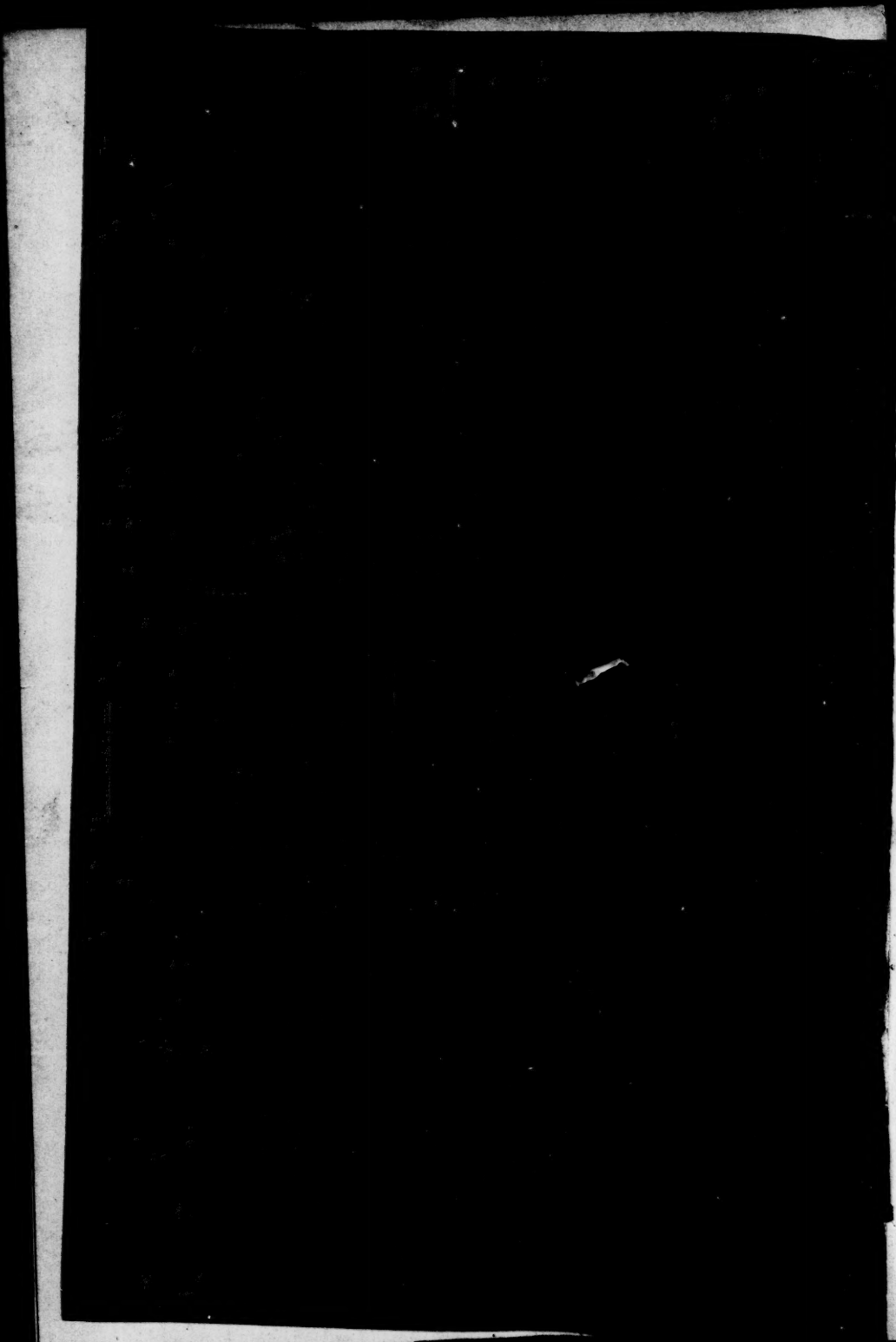
# In the Supreme Court of the United States.

OCTOBER TERM, 1875.

MARSHALL O. ROBERTS ET AL., TRUSTEES, &C., APPELLANTS,
*vs.*
THE UNITED STATES.
} No. 539.

Motion to modify decree

Motion denied



# In the Supreme Court of the United States.

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*vs.*
THE UNITED STATES.
} No. 539.

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In the above-entitled cause, the appellees move the court to modify its decree therein, so that the Court of Claims may be permitted, in its award of compensation to the appellants, to deduct the sums received by them upon the original contract with Sloo for the transportation of the California mails by the route via Havana, for such time and trips as the record shows no such mails were carried over said indirect route, (Record, 69, folio 108,) and to render judgment only for the balance to be found due, if any, after allowing the sums thus paid for carrying the mails at times and trips when none were carried; or that the decree may be for that court to proceed according to law.

THE UNITED STATES,
By EDWIN B. SMITH,
*Assistant Attorney-General.*

Over

In support of the above motion, the Government specially calls the attention of the court to certain facts to which no reference is made in the opinion heretofore rendered. The original and amended petitions state (Record, 3, 4, folio 5; 30, 31, folios 49, 51, §§ x, xi) that the mails were carried by *direct* steamers between New York and Chagres from August 13, 1851, to October 16, 1859; "*that during this period the mails were also carried by said company by the regular line of steamers, touching at the intermediate points above mentioned to New Orleans*, as provided by the contract aforesaid, *for all of which last-mentioned service under said contract they have been fully paid*, and the same has, as between the United States and the United States Mail Steamship Company, been entirely and completely settled." The allegation aforesaid, that the mails were "also carried by the regular line of steamers, touching at the intermediate points," is *expressly negatived* by the Court of Claims in its twelfth finding, (Record, 69, folio 108,) which states that, from July, 1854, to September 20, 1859, *no mails were carried* by these "regular steamers, touching at intermediate points." But the compensation was $290,000 *per annum*, payable quarterly, *irrespective of the weight of mails or number of trips* over that (original) route. (Record, 2, folio 2.) The petitioners say they have received this compensation under their contract. That is to say, they have been paid for five years' carriage of the California mails, (at least,) during which time they *carried no California mail* whatever, except those for which they now seek compensation.

From June 24, 1852, to July, 1854, California mails were sent from New Orleans to Chagres, or Aspinwall, a substituted port, as well as from New York; but from

July, 1854, to September 20, 1859, the steamers running over the routes of the original contract, carried *no* California mail-matter, instead of carrying *all* of it, as they would have been compelled to do, for this $290,000 *per annum*, had they not been willing to take it in their direct steamers. *For carrying these mails during this period*, over whatsoever route taken, *the claimants were paid over a million and a half dollars.* Their only just claim, *if any* they have, can be for nothing more than for "*additional*" compensation, because of taking them over the direct, instead of the indirect, route. But they, clearly, ought not to have the full $290,000 annually, while voluntarily arranging to take *no* California mails upon the ships to which this subsidy was granted, and then receive the customary express-freight rates for every pound of California mail-matter carried during these same years, in which they were drawing their pay quarterly under the contract, and carrying no other such mails than those for which they now seek "additional compensation." Their petitions and the private act giving them a standing in court recognize this $290,000 per year as part payment for carrying these California mails; and only claim an equitable increase, because they were carried directly instead of circuitously. But they carried *all* these mails (from July, 1854, to September 20, 1859) by their *direct* steamers; they carried *nothing* for California in the *indirect* steamers; therefore, so far as this postal matter is concerned, the $290,000 was compensation for carrying it in the *direct* steamers, or else it was a *gratuity*. It should be taken as part of their compensation, and judgment rendered only for such balance, *if any be found to exist*, computing the pounds of mail-matter carried at 6 cents a pound,

and deducting whatever was included in the quarterly payments aforesaid as compensation for the conveyance of the California mails. The decree should be so modified, or else it should simply be that the Court of Claims proceed according to law upon the facts found by them, and the law as given by this court. The mandate already issued should be recalled and a new one issued in the ordinary form, omitting the special clause with which the mandate sent down concluded. Computation made according to that mandate would give the appellees a very large sum to which the law and the facts do not entitle them.

EDWIN B. SMITH,
*Assistant Attorney-General.*

The California mail was the great inducement to grant the subsidy of $290.000 a year by the contract of 1847. The main purpose was to establish steam-connection between the Eastern States and our then-newly acquired territory upon the Pacific. All the rest was incidental.